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SIXTY-SECOND

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

1997

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NATIONAL LABOR RELATIONS BOARD

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Director
Division of Administration

[1]Deceased February 28, 1997.
[2]Appointed Acting Chief Counsel to replace William R. Stewart who retired April 3, 1997.
[3]Appointed Director, Office of Representation Appeals November 24, 1996.
[4]Became Acting Associate General Counsel on December 24, 1996, to replace B. Allan Benson.

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LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., May 1, 1998.

SIR: As provided in Section 3(c) of the Labor Management Relations Act, 1947, I submit the Sixty-Second Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 1997.

Respectfully submitted,
WILLIAM B. GOULD IV, *Chairman*

THE PRESIDENT OF THE UNITED STATES
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
Washington, D.C.

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I

Operations In Fiscal Year 1997

A. Summary

The National Labor Relations Board, an independent Federal agency, initiates no cases: it acts only on those cases brought before it. All proceedings originate from filings by the major segment of the public covered by the National Labor Relations Act—employees, labor unions, and private employers who are engaged in interstate commerce. During fiscal year 1997, 39,618 cases were received by the Board.

The public filed 33,439 charges alleging that business firms or labor organizations, or both, committed unfair labor practices, prohibited by the statute, which adversely affected hundreds of thousands of employees. The NLRB during the year also received 5897 petitions to conduct secret-ballot elections in which workers in appropriate groups select or reject unions to represent them in collective bargaining with their employers. Also, the public filed 282 amendment to certification and unit clarification cases.

After the initial flood of charges and petitions, the flow narrows because the great majority of the newly filed cases are resolved—and quickly—in NLRB's national network of field offices by dismissals, withdrawals, agreements, and settlements.

At the end of fiscal year 1997, the five-member Board was composed of Chairman William B. Gould IV and Members Sarah M. Fox and John E. Higgins, Jr. Frederick L. Feinstein served as General Counsel.

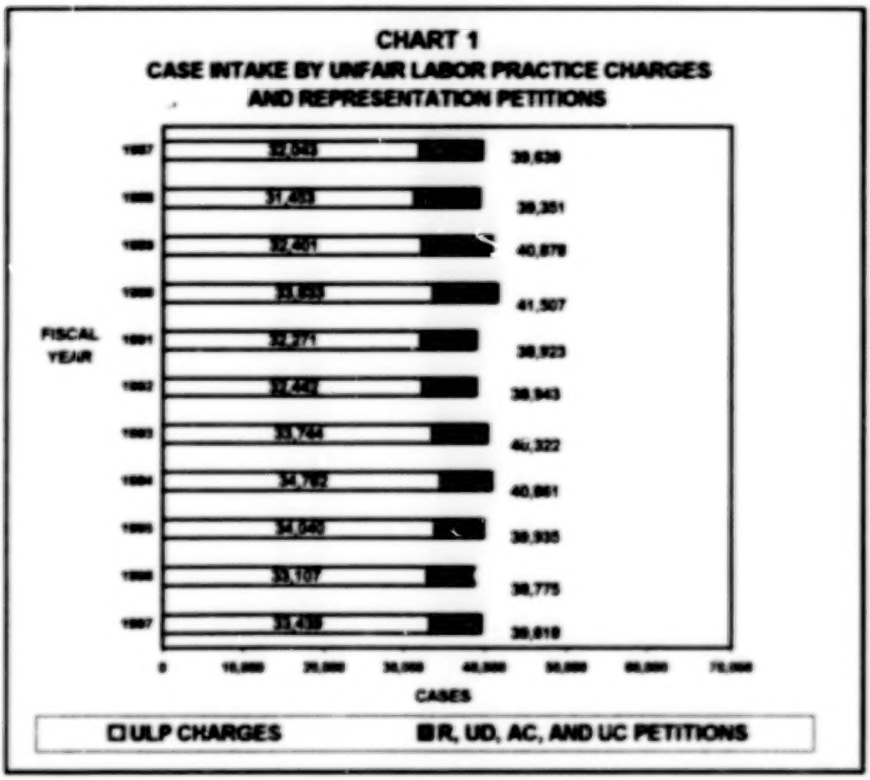
Statistical highlights of NLRB's casehandling activities in fiscal 1997 include:

- The NLRB conducted 3480 conclusive representation elections among some 205,175 employee voters, with workers choosing labor unions as their bargaining agents in 48.2 percent of the elections.
- Although the Agency closed 38,437 cases, 37,249 cases were pending in all stages of processing at the end of the fiscal year. The closings included 32,341 cases involving unfair labor practice charges and 5717 cases affecting employee representation and 379 related cases.
- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 11,622.

• The amount of $80,366,955 in reimbursement to employees illegally discharged or otherwise discriminated against in violation of their organizational rights was obtained by the NLRB from employers and unions. This total was for lost earnings, fees, dues, and fines. The NLRB obtained 2821 offers of job reinstatements, with 2266 acceptances.

• Acting on the results of professional staff investigations, which produced a reasonable cause to believe unfair labor practices had been committed, Regional Offices of the NLRB issued 3035 complaints, setting the cases for hearing.

• NLRB's corps of administrative law judges issued 333 decisions.



NLRB Administration

The National Labor Relations Board is an independent Federal agency created in 1935 by Congress to administer the basic law governing relations between labor unions and business enterprises engaged in interstate commerce. This statute, the National Labor Relations Act, came into being at a time when labor disputes could and did threaten the Nation's economy.

Declared constitutional by the Supreme Court in 1937, the Act was substantially amended in 1947, 1959, and 1974, each amendment increasing the scope of the NLRB's regulatory powers.

The purpose of the Nation's primary labor relations law is to serve the public interest by reducing interruptions in commerce caused by industrial strife. It seeks to do this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The overall job of the NLRB is to achieve this goal through administration, interpretation, and enforcement of the Act.

In its statutory assignment, the NLRB has two principal functions: (1) to determine and implement, through secret-ballot elections, the free democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions or both.

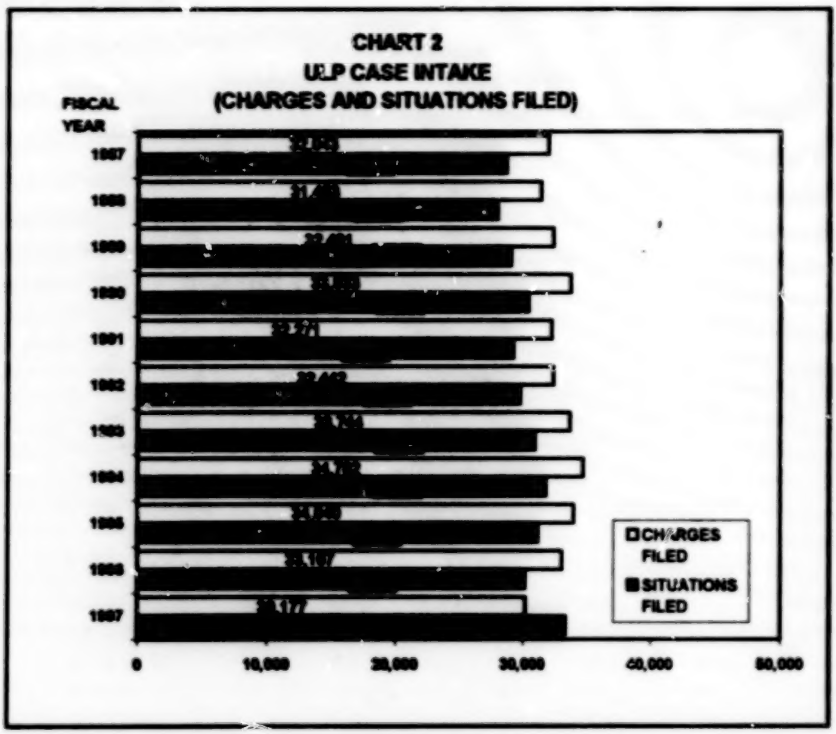
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 52 during fiscal year 1997.

The Act's unfair labor practice provisions place certain restrictions on actions of employers and labor organizations in their relations with employees, as well as with each other. Its election provisions provide mechanics for conducting and certifying results of representation elections to determine collective-bargaining wishes of employees, including balloting to determine whether a union shall continue to have the right to make a union-shop contract with an employer.

In handling unfair labor practices and election petitions, the NLRB is concerned with the adjustment of labor disputes either by way of settlements or through its quasi-judicial proceedings, or by way of secret-ballot employee elections.

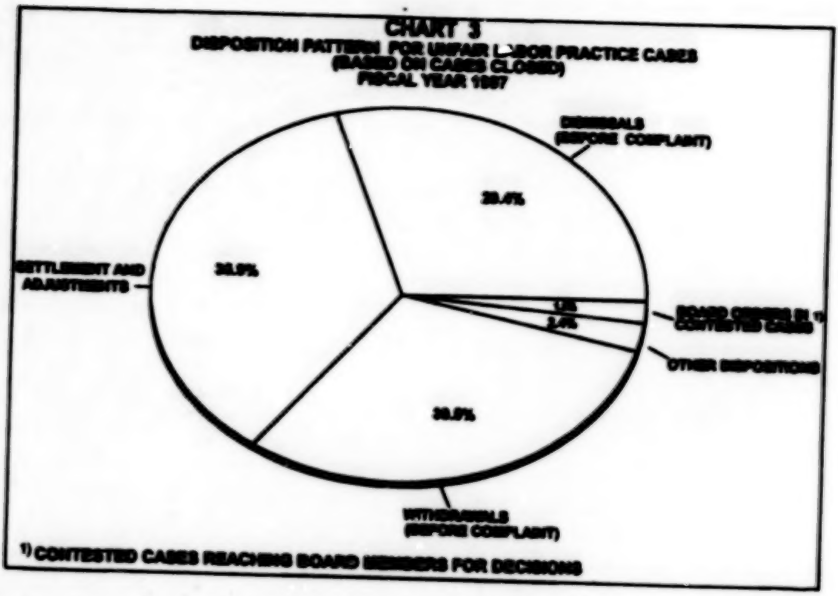
The NLRB has no independent statutory power of enforcement of its decisions and orders. It may, however, seek enforcement in the U.S. courts of appeals, and parties to its cases also may seek judicial review.

NLRB authority is divided by law and by delegation. The five-member Board primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel, who, like each Member of the Board, is appointed by the President, is responsible for the issuance and prosecution of formal complaints in cases leading to Board decision, and has general supervision of the NLRB's nationwide network of offices.



For the conduct of its formal hearings in unfair labor practice cases, the NLRB employs administrative law judges who hear and decide cases. Administrative law judges' decisions may be appealed to the Board by the filing of exceptions. If no exceptions are taken, the administrative law judges' orders become orders of the Board.

All cases coming to the NLRB begin their processing in the Regional Offices. Regional Directors, in addition to processing unfair labor practice cases in the initial stages, also have the authority to investigate representation petitions, to determine units of employees appropriate for collective-bargaining purposes, to conduct elections, and to pass on objections to conduct of elections. There are provisions for appeal of representation and election questions to the Board.



B. Operational Highlights

1. Unfair Labor Practices

Charges that business firms, labor organizations, or both have committed unfair labor practices are filed with the National Labor Relations Board at its field offices nationwide by employees, unions, and employers. These cases provide a major segment of the NLRB workload.

Following their filing, charges are investigated by the Regional professional staff to determine whether there is reasonable cause to believe that the Act has been violated. If such cause is not found, the Regional Director dismisses the charge or it is withdrawn by the charging party. If the charge has merit, the Regional Director seeks voluntary settlement or adjustment by the parties to the case to remedy the apparent violation; however, if settlement efforts fail, the case goes to hearing before an NLRB administrative law judge and, lacking settlement at later stages, on to decision by the five-member Board.

More than 90 percent of the unfair labor practice cases filed with the NLRB in the field offices are disposed of in a median of some 94 days without the necessity of formal litigation before the Board. About 2 percent of the cases go through to Board decision.

In fiscal year 1997, 33,439 unfair labor practice charges were filed with the NLRB, an increase of 1 percent from the 33,107 filed in fiscal year 1996. In situations in which related charges are counted as

a single unit, there was very little increase from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 25,809 cases, less than 1 percent more than the 25,752 of 1996. Charges against unions increased about 4 percent to 7595 from 7311 in 1996.

There were 34 charges of violation of Section 8(e) of the Act, which bans hot-cargo agreements. (Tables 1A and 2.)

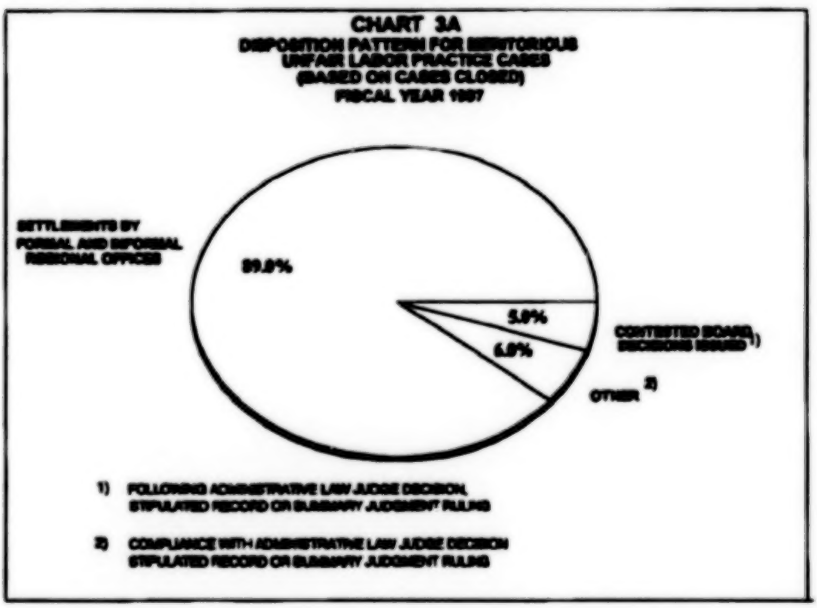
The majority of all charges against employers alleged illegal discharge or other discrimination against employees. There were 13,127 such charges in 56 percent of the total charges that employers committed violations.

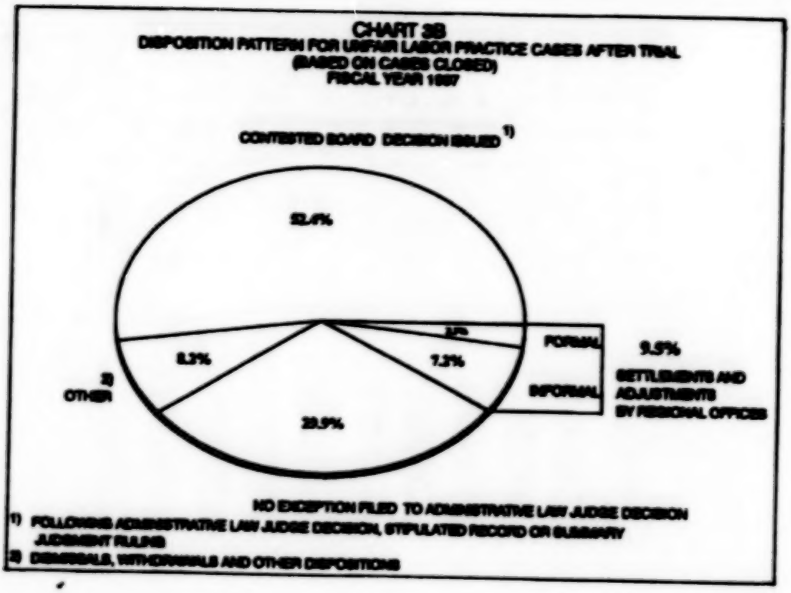
Refusal to bargain was the second largest category of allegations against employers, comprising 10,405 charges, in about 44 percent of the total charges. (Table 2.)

Of charges against unions, the majority (6433) alleged illegal restraint and coercion of employees, about 79 percent. There were 760 charges against unions for illegal secondary boycotts and jurisdictional disputes, an increase of about 8 percent from the 706 of 1996.

There were 783 charges (about 10 percent) of illegal union discrimination against employees, a decrease of 12 percent from the 888 of 1996. There were 130 charges that unions picketed illegally for recognition or for organizational purposes, compared with 85 charges in 1996. (Table 2.)

In charges filed against employers, unions led with 76 percent of the total. Unions filed 19,526 charges and individuals filed 6283.





Concerning charges against unions, 5814 were filed by individuals, or 77 percent of the total of 7596. Employers filed 1630 and other unions filed the 152 remaining charges.

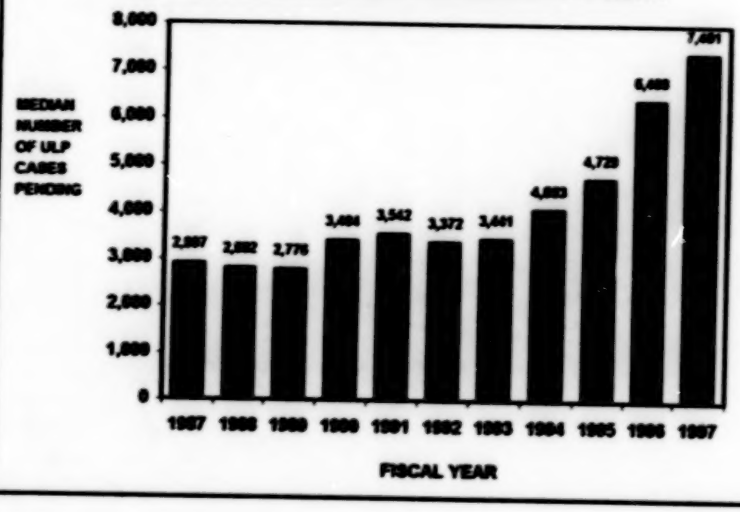
In fiscal year 1997, 32,341 unfair labor practice cases were closed. About 96 percent were closed by NLRB Regional Offices, the same as in 1996. During the fiscal year, 35.9 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 30.5 percent were withdrawn before complaint, and 29.4 percent were administratively dismissed.

In evaluation of the Regional workload, the number of unfair labor practice charges found to have merit is important—the higher the merit factor the more litigation required. In fiscal year 1997, 39.5 percent of the unfair labor practice cases were found to have merit.

When the Regional Offices determine that charges alleging unfair labor practices have merit, attempts at voluntary resolution are stressed—to improve labor-management relations and to reduce NLRB litigation and related casehandling. Settlement efforts have been successful to a substantial degree. In fiscal year 1997, precomplaint settlements and adjustments were achieved in 8628 cases, or 27.0 percent of the charges. In 1997, the percentage was 25.4. (Chart 5.)

CHART 4

NUMBER OF UNFAIR LABOR PRACTICE CASES PENDING UNDER PRELIMINARY INVESTIGATION, MONTH TO MONTH

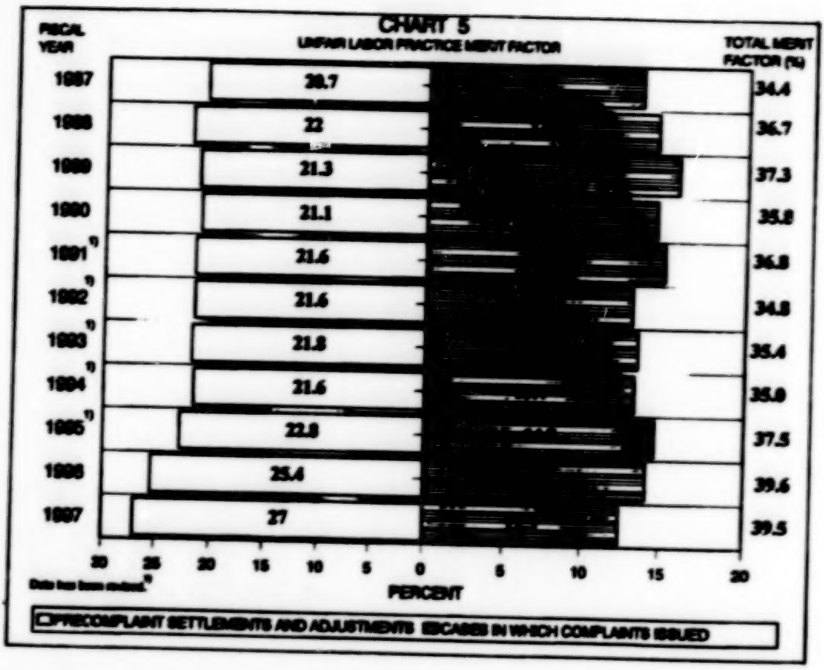


Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 1997, 3035 complaints were issued, compared with 3154 in the preceding fiscal year. (Chart 6.)

Of complaints issued, 90.0 percent were against employers and 10.0 percent against unions.

NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 86 days. The 86 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resorting to formal NLRB processes. (Chart 6.)

Additional settlements occur before, during, and after hearings before administrative law judges. The judges issued 333 decisions in 454 cases during 1997. They conducted 332 initial hearings, and 3 additional hearings in supplemental matters. (Chart 8 and Table 3A.)

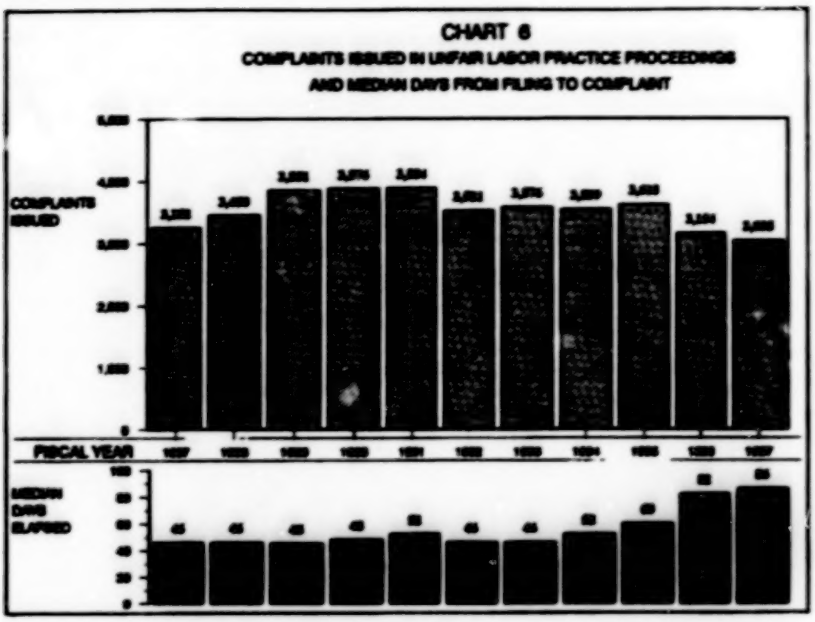


By filing exceptions to judges' findings and recommended rulings, parties may bring unfair labor practice cases to the Board for final NLRB decision.

In fiscal year 1997, the Board issued 435 decisions in unfair labor practice cases contested as to the law or the facts—380 initial decisions, 14 backpay decisions, 15 determinations in jurisdictional work dispute cases, and 26 decisions on supplemental matters. Of the 380 initial decision cases, 349 involved charges filed against employers and 31 had union respondents.

For the year, the NLRB awarded backpay of $79.6 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added another $765,360. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. About 2821 employees were offered reinstatement, and about 80 percent accepted.

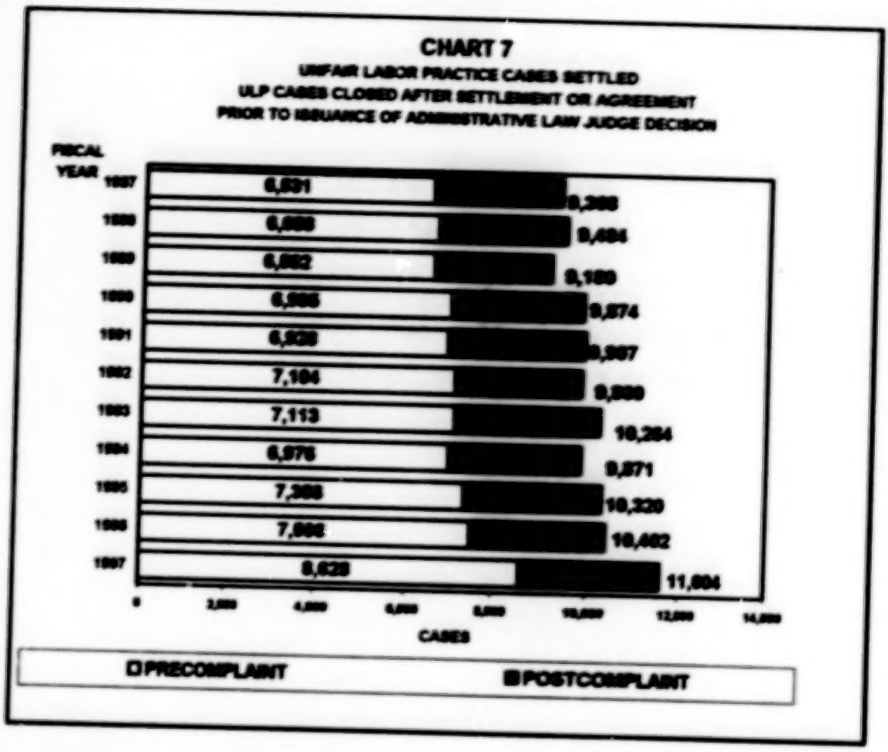
At the end of fiscal 1997, there were 34,670 unfair labor practice cases being processed at all stages by the NLRB, compared to 33,572 cases pending at the beginning of the year.



2. Representation Cases

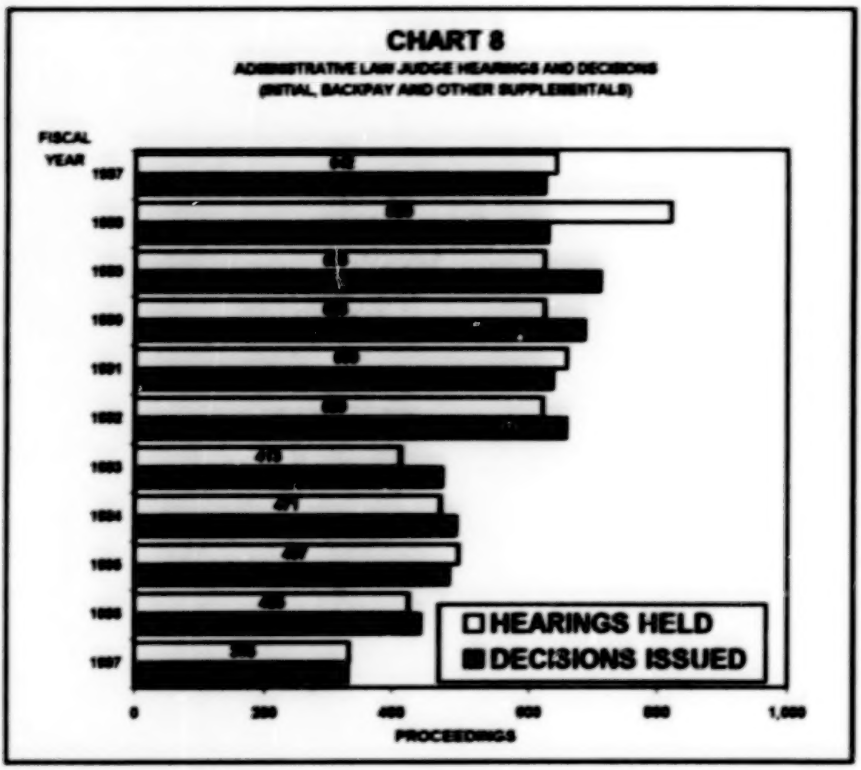
The NLRB received 6179 representation and related case petitions in fiscal 1997, compared to 5668 such petitions a year earlier.

The 1997 total consisted of 4965 petitions that the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 845 petitions to decertify existing bargaining agents; 87 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 268 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units. Additionally, 14 amendment of certification petitions were filed.



During the year, 6096 representation and related cases were closed, compared to 5680 in fiscal 1996. Cases closed included 4854 collective-bargaining election petitions; 863 decertification election petitions; 87 requests for deauthorization polls; and 292 petitions for unit clarification and amendment of certification. (Chart 14 and Tables 1 and 1B.)

The overwhelming majority of elections conducted by the NLRB resulted from some form of agreement by the parties on when, where, and among whom the voting should occur. Such agreements are encouraged by the Agency. In 15.0 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were no cases where the Board directed elections after transfers of cases from the Regional Office. (Table 10.) There were three cases that resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing.

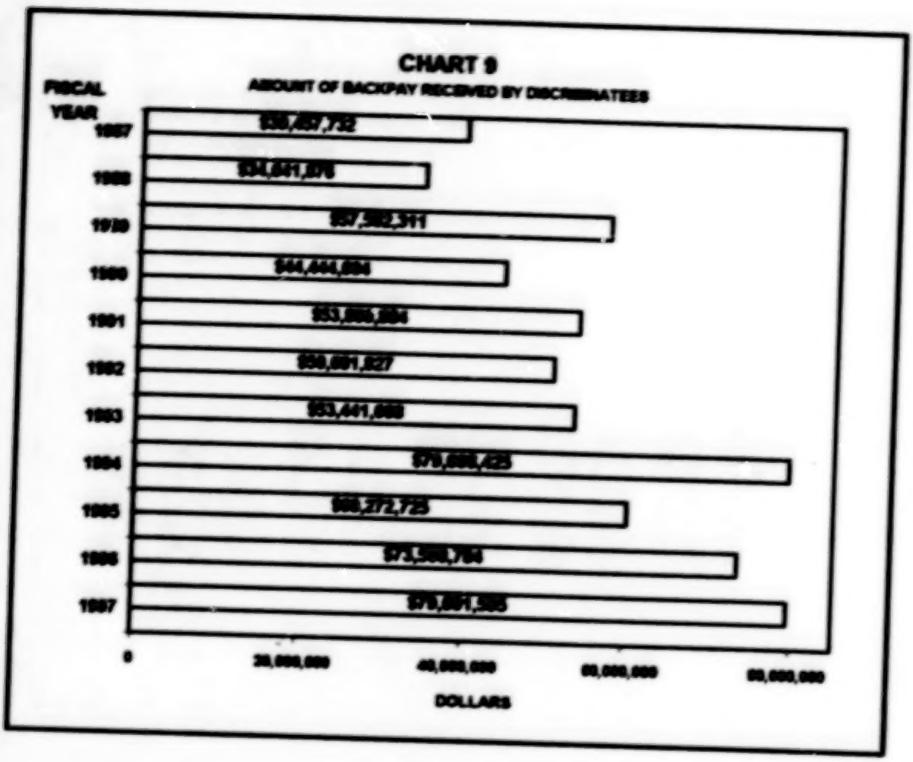


3. Elections

The NLRB conducted 3480 conclusive representation elections in cases closed in fiscal 1997, compared to the 3277 such elections a year earlier. Of 236,016 employees eligible to vote, 205,175 cast ballots, virtually 9 of every 10 eligible.

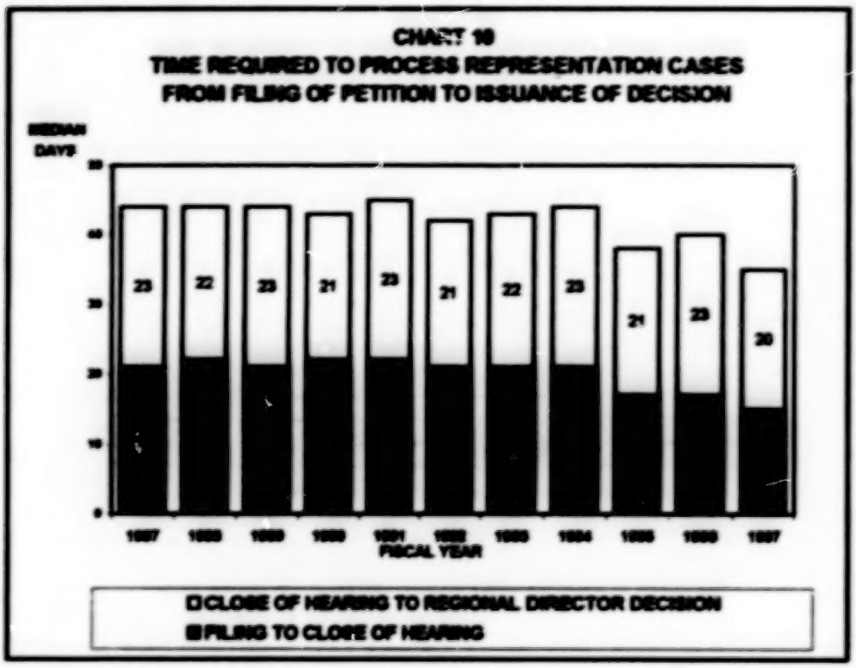
Unions won 1677 representation elections, or 48.2 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 101,646 workers. The employee vote over the course of the year was 98,708 for union representation and 106,467 against.

The representation elections were in two categories—the 3075 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 405 decertification elections determining whether incumbent unions would continue to represent employees.



There were 3376 select-or-reject-bargaining-rights (1 union on ballot) elections, of which unions won 1595, or 47.2 percent. In these elections, 89,443 workers voted to have unions as their agents, while 102,362 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 90,781 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 104 multiunion elections, in which 2 or more labor organizations were on the ballot, as well as a choice for no representation. Employees voted to continue or to commence representation by 1 of the unions in 82 elections, or 78.9 percent.

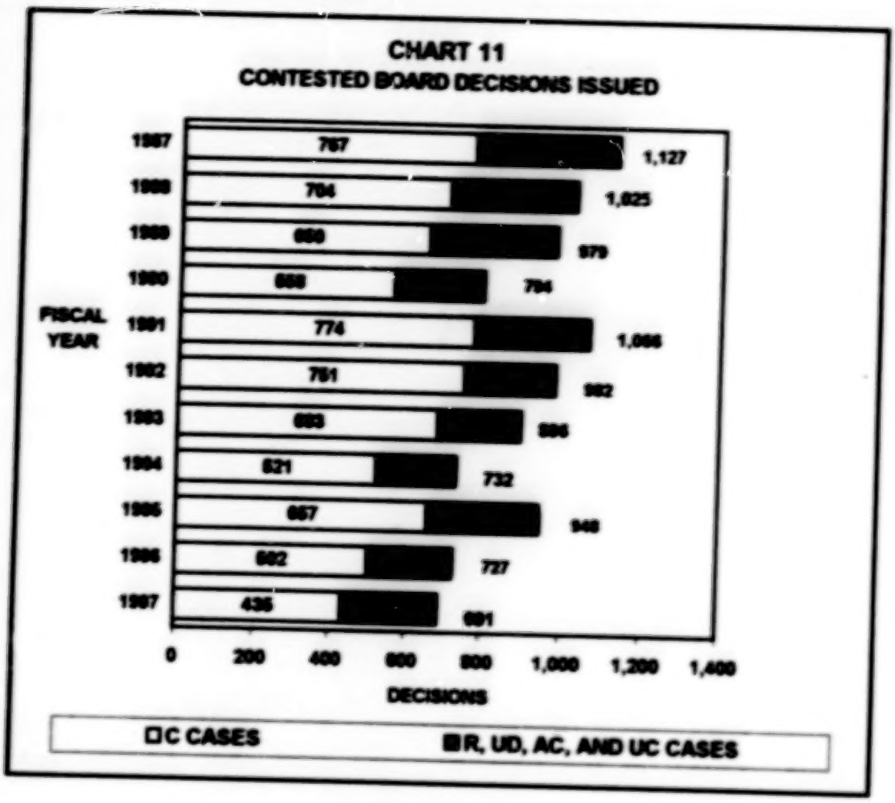


As in previous years, labor organization results brought continued representation by unions in 127 elections, or 31.4 percent, covering 8361 employees. Unions lost representation rights for 10,056 employees in 278 elections, or 68.6 percent. Unions won in bargaining units averaging 66 employees, and lost in units averaging 36 employees. (Table 13.)

Besides the conclusive elections, there were 207 inconclusive representation elections during fiscal year 1997 which resulted in withdrawal or dismissal of petitions before certification, or required a rerun or runoff election.

In deauthorization polls, labor organizations lost the right to make union-shop agreements in 14 referendums, or 37.8 percent, while they maintained the right in the other 23 polls which covered 2197 employees. (Table 12.)

For all types of elections in 1997, the average number of employees voting, per establishment, was 59, compared to 58 in 1996. About 72 percent of the collective-bargaining and decertification elections involved 59 or fewer employees. (Tables 11 and 17.)



4. Decisions Issued

a. The Board

Dealing effectively with the remaining cases reaching it from nationwide filings after dismissals, settlements, and adjustments in earlier processing stages, the Board handed down 1065 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared to the 1089 decisions rendered during fiscal year 1996.

A breakdown of Board decisions follows:

Total Board decisions		**1,065**
Contested decisions		**691**
Unfair labor practice decisions	435	
Initial (includes those based on stipulated record)	380	
Supplemental	26	
Backpay	14	

Determinations in jurisdictional disputes	15	
Representation decisions		253
After transfer by Regional Directors for initial decision	2	
After review of Regional Director decisions	49	
On objections and/or challenges	202	
Other decisions		3
Clarification of bargaining unit	3	
Amendment to certification	0	
Union-deauthorization	0	
Noncontested decisions		374
Unfair labor practice	182	
Representation	188	
Other	4	

The majority (65 percent) of Board decisions resulted from cases contested by the parties as to the facts and/or application of the law. (Tables 3A, 3B, and 3C.)

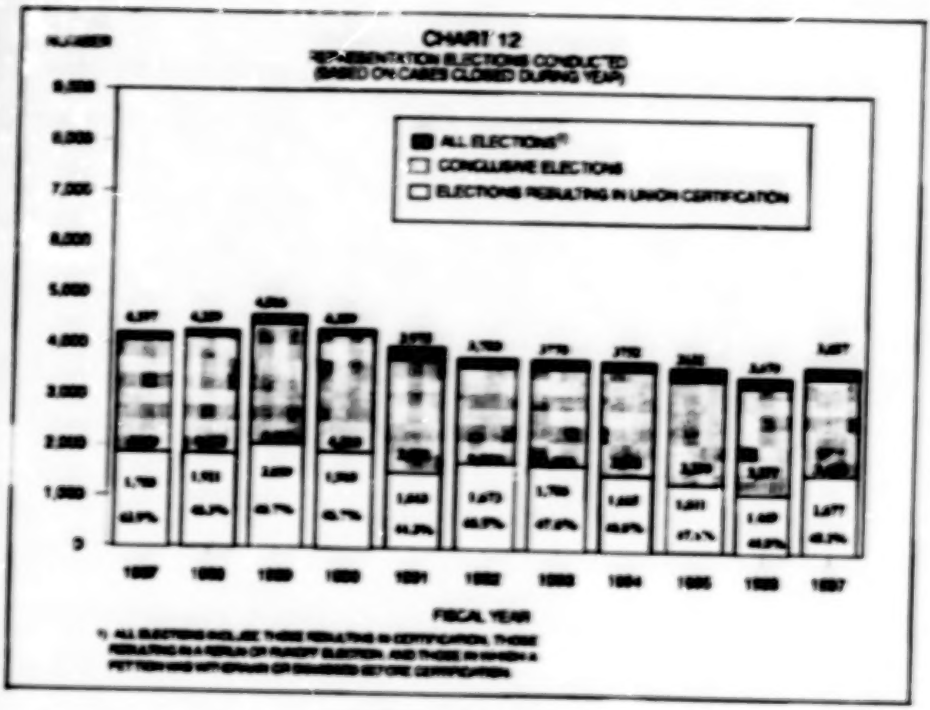
In fiscal 1997, 5 percent of all meritorious charges and 52 percent of all cases in which a hearing was conducted reached the Board for decision. (Charts 3A and 3B.) Generally, unfair labor practice cases take about twice the time to process than representation cases.

b. Regional Directors

NLRB Regional Directors issued 778 decisions in fiscal 1997, compared to 682 in 1996. (Chart 13 and Tables 3B and 3C.)

c. Administrative Law Judges

With a leveling in case filings alleging unfair labor practices, administrative law judges issued 333 decisions and conducted 335 hearings. (Chart 8 and Table 3A.)

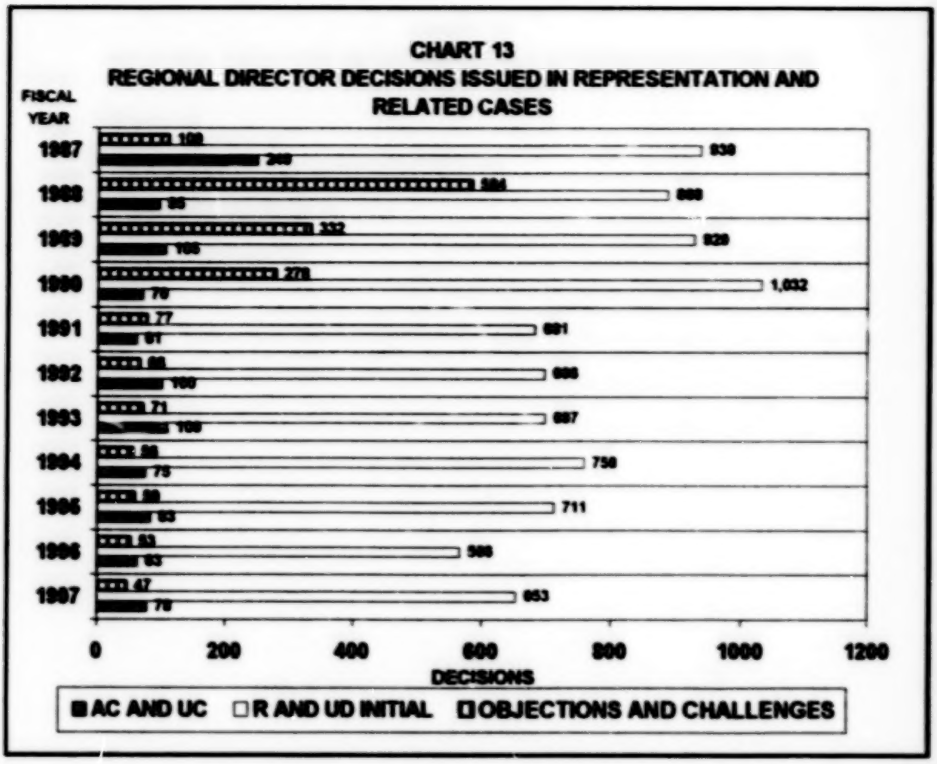


5. Court Litigation

a. Appellate Courts

The National Labor Relations Board is involved in more litigation in the United States courts of appeals than any other Federal administrative agency.

In fiscal year 1997, 166 cases involving the NLRB were decided by the United States courts of appeals compared to 147 in fiscal year 1996. Of these, 83.8 percent were won by NLRB in whole or in part compared to 83.7 percent in fiscal year 1996; 4.2 percent were remanded entirely compared to 4.1 percent in fiscal year 1996; and 12.0 percent were entire losses compared to 12.2 percent in fiscal year 1996.

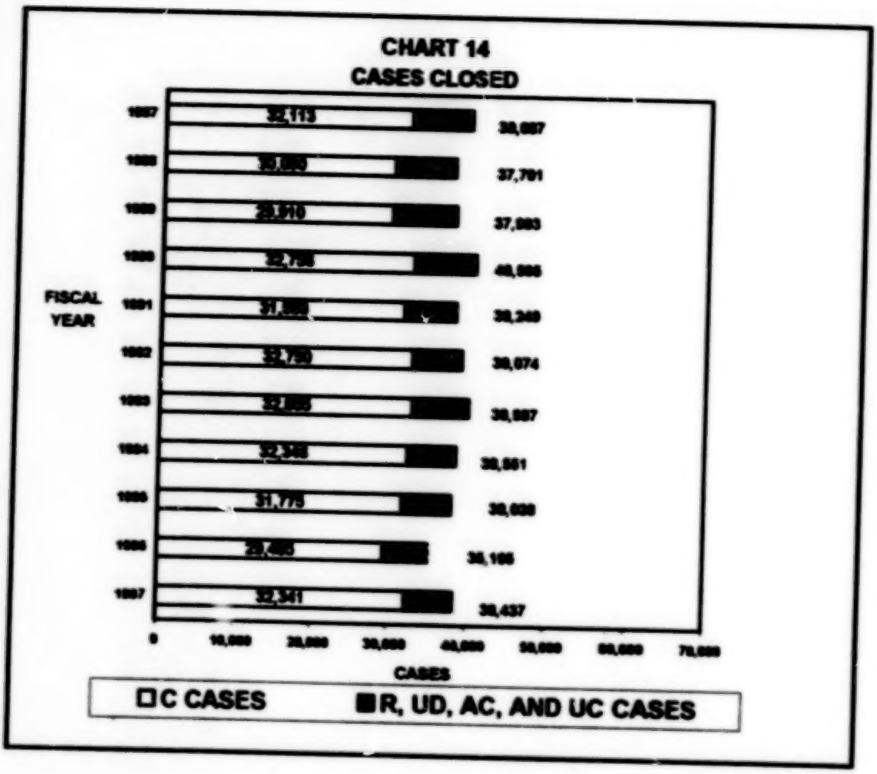


b. The Supreme Court

In fiscal 1997, there were no Board cases decided by the Supreme Court. The Board did not participate as amicus in any cases in fiscal 1997.

c. Contempt Actions

In fiscal 1997, 120 cases were referred to the contempt section for consideration of contempt action. There were 21 contempt proceedings instituted. There were six contempt adjudications awarded in favor of the Board; eight cases in which the court directed compliance without adjudication; and there were no cases in which the petition was withdrawn.



d. Miscellaneous Litigation

There were 32 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB's position was upheld in 30 cases. (Table 21.)

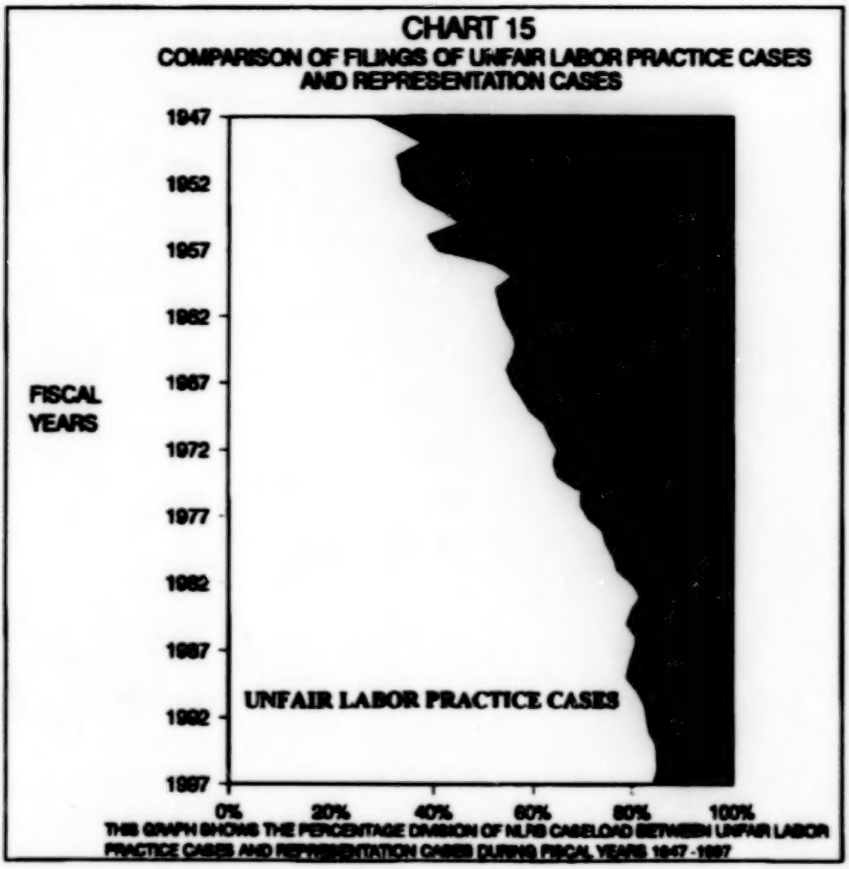
e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 52 petitions filed with the U.S. district courts, compared to 57 in fiscal year 1996. (Table 20.) Injunctions were granted in 18, or 72 percent, of the 25 cases litigated to final order.

NLRB injunction activity in district courts in 1997:

Granted	18
Denied	7
Withdrawn	5

Dismissed	1
Settled or placed on court's inactive lists	22
Awaiting action at end of fiscal year	12



C. Decisional Highlights

In the course of the Board's administration of the Act during the report period, it was required to consider and resolve complex problems arising from the great variety of factual patterns in the many cases reaching it. In some cases, new developments in industrial relations, as presented by the factual situation, required the Board's accommodation of established principles to those developments. Chapter II on "Board Procedure," Chapter III on "NLRB Jurisdiction," Chapter IV on "Representation Proceedings," and Chapter V on "Unfair Labor Practices" discuss some of the more significant decisions of the Board during the report period. The following summa-

rizes briefly some of the decisions establishing or reexamining basic principles in significant areas.

1. Sufficient Answer

In *Central States Xpress*,[1] the Board denied the General Counsel's Motion for Default Summary Judgment against a pro se respondent where the respondent's postcharge statement of position was found to be sufficient in lieu of a formal answer to the complaint, as required in Section 102.20 of the Board's Rules and Regulations. After first reiterating its general policy of not accepting postcharge, precomplaint statements of position in lieu of formal answers to complaints, the Board nevertheless, in an exception to that policy, accepted the respondent's statement of position as an answer to the complaint, on the grounds (1) that the respondent was acting pro se; (2) that it expressly resubmitted the statement of position as answer to the complaint; and (3) that the statement of position could reasonably be construed as denying the complaint allegations that the respondent ceased operation of its facility for unlawful reasons and that it unlawfully failed to bargain with the union about the closure of the facility.

2. *Excelsior* List Requirements

In *Mod Interiors*,[2] the Board majority found that an employer failed to comply with the *Excelsior*[3] requirements where the eligibility list contained a significant number of inaccurate addresses, the corrected eligibility list was only available to the union for 8 days before the election, and the election was decided by a close margin.

The Board majority found, in all the circumstances of the case, that the employer had failed to substantially comply with the requirements of the Board's *Excelsior* rule. Forty percent of the original addresses were inaccurate and, noting that the *Excelsior* rule is intended to ensure that all employees are fully informed about the arguments concerning representation and can freely and fully exercise their Section 7 rights,[4] the Board majority found that the union's inability to communicate with nearly half of the unit employees for the week following the date that the list was originally due effectively prevented those employees from obtaining information necessary for the exercise of their Section 7 rights. Thus, the Board majority concluded, in an election, like this one, decided by a close margin, this lack of information may have impeded a free and reasoned choice and required setting aside the election.

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[1] 324 NLRB No. 77 (Chairman Gould and Members Fox and Higgins).

[2] 324 NLRB No. 33 (Chairman Gould and Member Fox; Member Higgins dissenting).

[3] *Excelsior Underwear*, 156 NLRB 1236 (1966).

[4] *North Macon Health Care Facility*, 315 NLRB 359, 360–361 (1994).

3. Election Objections

In *ADIA Personnel Services*,[5] the Board held that it was within the Board's authority to consider, in the context of an objection, conduct which had been dismissed as an 8(a)(1) allegation, where the conduct may be found objectionable without determining that it is an unfair labor practice. The Board noted that where it is not necessary to conclude that an employer committed an unfair labor practice in order to find conduct objectionable, the fact that the General Counsel dismissed a charge alleging that by this same conduct the employer violated Section 8(a)(1) "does not require the pro forma overruling of the objection."[6] The Board noted that although the General Counsel has unlimited discretion under Section 3(d) as to what complaints will issue, the Board retains total discretion under Section 9(c) regarding representation proceedings.

4. Mandatory Bargaining Subject

In *Colgate-Palmolive Co.*,[7] the Board affirmed the administrative law judge's decision that the employer violated Section 8(a)(1) and (5), by failing and refusing to bargain with the union. The judge, relying, inter alia, on *Ford Motor Co. v. NLRB*,[8] found that the employer's installation and continued use of hidden surveillance cameras in the workplace is a mandatory subject of bargaining. The judge also found that the union has a statutory right to engage in collective bargaining over circumstances under which hidden cameras may be activated, the general areas in which they may be placed, and how employees will be disciplined if found to have engaged in improper conduct.

In *Ford Motor Co. v. NLRB*, the Supreme Court described mandatory subjects of bargaining as such matters that are "plainly germane to the 'working environment'" and "not among those 'managerial decisions, which lie at the core of entrepreneurial control.'"[9] As the judge found, the installation of surveillance cameras is both germane to the working environment and outside the scope of managerial decisions lying at the core of entrepreneurial control.

The Board also adopted the judge's finding that the union had not waived its statutory right to demand bargaining over the continued, future use of surveillance cameras, notwithstanding the employer's assertion that it had an established past practice of using hidden surveillance cameras in the workplace and that the union's failure to demand bargaining on prior occasions over the employer's installation of such cameras constituted a waiver. Because the Board has held that a union's acquiescence in an employer's past actions on a particular subject does not, without more, constitute a waiver of the right to bargain and there was no contention that the union otherwise waived its

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[5] 322 NLRB 994 (Chairman Gould and Members Browning and Fox).

[6] Id. at fn. 2.

[7] 323 NLRB No. 82 (Chairman Gould and Members Fox and Higgins).

[8] 441 U.S. 488 (1979).

[9] Id. at 498, quoting from *Fibreboard Corp. v. NLRB*, 379 U.S. 203, 222–223 (1964) (Stewart J. concurring).

statutory bargaining rights, the Board concluded that the union did not waive its right to bargain over the future installation of surveillance cameras in the employer's workplace.

5. Successor Employer

In *Advanced Stretchforming International*,[10] the Board found that a *Burns*[11] successor forfeited its right under *Spruce Up Corp.*[12] to set initial terms of employment by telling the predecessor employees that they would all be hired but that there would be no union. The "no union" statement was found to be a violation of Section 8(a)(1) and the respondent's subsequent unilateral setting of initial terms of employment was found to violate Section 8(a)(5).

Applying the rationale of its decision in *U.S. Marine Corp.*,[13] the Board held that a statement that there will be no union serves the same end as a refusal to hire employees from the predecessor's unionized work force. It blocks the process by which the obligations and rights of such a successor are incurred and accordingly warrants forfeiture of the right to set initial employment terms.

6. Duty to Furnish Information

In *GTE California, Inc.*,[14] the Board found that the employer did not violate Section 8(a)(5) and (1) of the Act by refusing to provide the union with the name, address, and unlisted telephone number of a customer whose complaint had led to an employee's discharge, because the employer arranged for, and the union agreed to, interviewing the customer over the telephone without her name, address, or telephone number being disclosed.

The union had filed a grievance over the discharge and repeatedly requested the complaining customer's name, address, and telephone number. The customer, who had an unlisted telephone number, denied the employer permission to release her name, address, and telephone number to the union. However, the employer did obtain the customer's agreement to speak to the union on the telephone, and the union's representative had a private conversation with the customer lasting about 20 minutes. The union did not thereafter request any additional information about the customer or seek any further contact with her.

The Board majority found that the employer's refusal to provide the customer's name, address, and telephone number to the union did not violate Section 8(a)(1), because the customer had an unlisted telephone number, the employer established a preexisting confidentiality interest in the customer's name, address, and telephone number. The majority further found that, in arranging for the union to interview the customer, the parties had reached an accommodation between the union's information interests and the employer's confidentiality inter-

[10] 323 NLRB No. 84 (Chairman Gould and Member Fox; Member Higgins concurring).
[11] *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).
[12] 209 NLRB 194 (1974), enfd. per curiam 529 F.2d 516 (4th Cir. 1975).
[13] 293 NLRB 699, 672 (1989).
[14] 324 NLRB No. 78 (Chairman Gould and Member Higgins; Member Fox concurring).

ests that succeeded in furthering both parties' interests. As the Board's decision in *Pennsylvania Power Co.*[15] called for parties to bargain toward accommodation between a union's information needs and an employer's legitimate confidentiality interest and the parties had, in fact, bargained for and achieved such an accommodation here, the majority concluded that the employer did not violate Section 8(a)(5) and (1) by refusing to provide the union with customer's name, address, and telephone number.

7. Obligation to Provide a *Beck* Objector with Financial Information

In *Carpenters Local 943 (Oklahoma Fixture Co.)*,[16] the Board held that the union violated Section 8(b)(1)(A) of the Act by failing to provide the charging party, who had registered a *Beck*[17] objection, with information concerning the percentage of the reduction in fees for objecting nonmembers, the basis for the union's calculation, and the right to challenge these figures.

The Board considered and rejected the union's argument that it need not have provided such financial information to the charging party, because it informed him that he could pay the equivalent of full dues to a mutually agreed-on charity. The Board observed that a union is not required to provide a *Beck* objector with financial information, in circumstances where the union expressly waives the objector's obligations to pay dues under the union-security clause. However, here, the union did not waive the charging party's obligations to pay any amounts under the union-security clause; rather, it is still requiring him to pay the equivalent of full dues and fees. The Board concluded that the union's use of a charitable alternative cannot serve to foreclose the requirement that it provide objectors with *Beck*-related financial information. Accordingly, the union unlawfully failed to provide the charging party with financial information to allow him to decide whether to mount a challenge to the union's dues reduction calculations.

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[15] 301 NLRB 1104 (1991).

[16] 322 NLRB 825 (Chairman Gould and Members Browning and Fox).

[17] *Communications Workers v. Beck*, 487 U.S. 735 (1988).

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 1997, are as follows:

Personnel compensation	$118,069,934
Personnel benefits	20,746,616
Benefits for former personnel	30,000
Travel and transportation of persons	2,794,982
Transportation of things	163,540
Rent, communications, and utilities	22,667,978
Printing and reproduction	206,205
Other services	7,508,010
Supplies and materials	552,756
Equipment	1,642,564
Insurance claims and indemnities	213,050
Total obligations and expenditures[18]	$174,595,635

[18] Includes $206,889 for reimbursables for casehandling in Saipan. Also includes $24,975 for reimbursables from Agriculture (Fitness Facility).

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II

Board Procedure

A. Disciplinary Proceedings

In the case of *In re: Stuart Bochner*,[1] the Board adopted an administrative law judge's recommended Order suspending Attorney Stuart Bochner for 2-1/2 years for engaging in willful delay of Board proceedings and "misconduct of an aggravated character" in violation of Sections 102.21 and 102.44(b) of the Board's Rules and Regulations.

In a hearing called solely to review Bochner's conduct in nine separate Board cases in which he acted as the attorney for respondent employers, the Board agreed with the judge that Bochner purposely engaged in delaying tactics by, among other ways, filing answers to complaints that he knew or should have known were false. Such conduct was found to constitute "willful" violations of Section 102.21 of the Board's Rules. The Board also agreed with the judge that Bochner engaged in "misconduct of an aggravated character" in violation of Section 102.44(b) by lying to the judge when he claimed ignorance of the existence of a General Counsel exhibit which was actually in his possession. Reversing the judge, the Board also found that Bochner violated Section 102.44(b) by failing, without reason, to comply with subpoenas properly served by the General Counsel in three cases.

Considering the totality of Bochner's conduct, the Board agreed with the judge that a 2-1/2 year suspension from Board practice, rather than a 5-year suspension which the General Counsel sought, was appropriate.

B. Jurat or Declaration Requirement (Sec. 102.11)

In *Alldata Corp.*,[2] the Board found, that Section 10(b) of the Act did not bar the issuance of a complaint based on a charge filed within the 6-month limitations period—and during the 1995 government shutdown—despite the absence of the jurat or declaration of truth required by Section 102.11 of the Board's Rules and Regulations.

The Respondent discharged charging party Karl Abbadessa on June 23, 1995. On December 19, 1995, when government offices were closed for lack of funds during congressional debate over the Federal

[1] 322 NLRB 1096 (Chairman Gould and Members Browning, Fox, and Higgins).
[2] 324 NLRB No. 88 (Members Fox and Higgins; Chairman Gould dissenting in part).

budget, Abbadessa's attorney transmitted an unfair labor charge by facsimile machine to the Board's Regional Office in Brooklyn, New York, and to the respondent. As the judge notes, both facsimiles were received before the expiration of the 10(b) period. The faxed charge, in a form prepared by the attorney, alleged that Abbadessa's discharge violated Section 8(a)(1) of the Act. The charge, signed by Abbadessa's attorney, did not contain an oath or declaration, under penalty of perjury, that the allegations made therein were true. The Regional Office received the charge but took no further action due to the suspension of all operations.

On January 18, 1996, after the Board's offices had fully reopened, the Regional Director wrote to the charging party's attorney and informed him that he would need to resubmit the charge on the Board's own charge form, which form contains a preprinted declaration that the statements therein are true. The charging party resubmitted the charge on February 8, 1996, and the Regional Office served it on the respondent the next day. The General Counsel investigated the charge and issued a complaint on April 20, 1996.

Section 102.11 of the Board's Rules and Regulations states, in relevant part, that

> [s]uch charges shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury that its contents are true and correct.

The purpose of the requirement of a jurat or declaration is to "safeguard[] the Board's processes against the abuse which would inhere in an irresponsible exercise by members of the public of the charging power to insure that [the] power be soberly exercised."[3]

The Board agreed with the judge regarding the purpose of the jurat, but found that, given that the charge was timely filed, the Regional Director satisfied this purpose by withholding investigation of the charge until the charging party resubmitted the charge on a Board form with the required statement of truthfulness. "The time taken to comply with the jurat or declaration requirement of Section 102.11 . . . does not tack onto the time already run prior to the filing of the original charge. A charge timely filed within the 10(b) period remains timely pending its revision to comply with this provision of the Board's Rules."[4]

The Board reversed the judge's dismissal of the complaint and remanded it to the judge for further proceedings. Chairman Gould dissented from the decision to remand, finding sufficient basis in the record and the judge's decision to resolve the substantive issues raised in the exceptions.

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[3] *Freightway Corp.*, 299 NLRB 531 (1990), quoting *Ladies Garment Workers (Saturn & Sedran, Inc.)*, 136 NLRB 524, 527–528 (1962).

[4] 324 NLRB No. 88, slip op. at 2.

C. Sufficient Answer

In *Central States Xpress*,[5] the Board denied the General Counsel's Motion for Default Summary Judgment against a pro se respondent where, as an exception to the Board's general rule, the respondent's postcharge statement of position was found to be sufficient in lieu of a formal answer to the complaint, as required in Section 102.20 of the Board's Rules and Regulations.

The March 25, 1996 unfair labor practice charges alleged, inter alia, that the respondent had unlawfully closed its facility and terminated the employment of its employees because they had sought union representation. In response to an April 10 letter from the Board's Resident Office, the respondent (acting pro se throughout this proceeding) notified the Resident Office in writing on April 19 that, in essence, it had closed its facility for economic reasons alone. The complaint issued on May 17, alleging, inter alia, that the respondent violated Section 8(a)(1), (3), and (5) by closing its facility and terminating the employment of its employees (a) because they sought to be covered by a collective-bargaining agreement, assisted the union, and engaged in protected concerted activities; (b) to discourage employees from engaging in such activities; and (c) without notifying the union in advance and without affording the union a meaningful opportunity to bargain about either the decision to close the facility or the effects of the closure on the unit.

The respondent did not file an answer to the complaint within the 14-day time period set forth in Section 102.20 of the Board's Rules and Regulations. On June 12, the General Counsel informed the respondent in writing that unless it filed an answer to the complaint by June 24, the General Counsel would file a Motion for Summary Judgment. On June 19, the respondent replied in writing to the Regional Director, enclosing a copy of its April 19 letter to the Resident Office, and stating that the April 19 letter responded to most of the allegations subsequently included in the May 17 complaint. The General Counsel thereafter filed a Motion for Default Summary Judgment, asserting, inter alia, that the respondent had failed to file an answer to the complaint or any document purporting to be an appropriate answer.

The Board denied the motion. After first reiterating its general policy of not accepting postcharge, precomplaint statements of position in lieu of formal answers to complaints, the Board nevertheless, in an exception to that policy, accepted the respondent's statement of position as an answer to the complaint, on the grounds (1) that the respondent was acting pro se; (2) that it expressly resubmitted the statement of position as an answer to the complaint; and (3) that the statement of position could reasonably be construed as denying the complaint allegations that the respondent ceased operation of its facility for unlawful reasons and that it unlawfully failed to bargain with the union about the closure of the facility.

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[5] 324 NLRB No. 77 (Chairman Gould and Members Fox and Higgins).

D. Effect of Settlement Agreement

In *Group Health, Inc.*,[6] the Board approved revised settlement agreements, over the objection of the charging party, that had been revised in order to comport with the Eighth Circuit's remand to the Board requiring expunction of "members in good standing" language from the union-security clause in the collective-bargaining agreement between the union and the employer.[7]

The original settlement agreements, approved by the Board September 29, 1993, provided that the union and the employer would post notices stating that they would not give effect to the "members in good standing" provision in the contract, unless that provision also stated that employees only need pay the union's periodic dues and initiation fees. The settlements also provided that newly hired and nonmember employees would be informed of their *Beck*[8] rights. Further, the settlements indicated that the charging party had been reimbursed for all money wrongfully deducted from his pay and indicated that the union would reimburse all *Beck* objectors for money spent by the union on nonrepresentational activities.

In *Bloom v. NLRB*, the Eighth Circuit denied enforcement of the Board's Order solely on the ground that "[b]ecause the overly broad union security clause was unlawfully interpreted and applied, an adequate remedy in this case requires the expunction of the offending clause."[9]

The revised settlement agreements provided that the union and the employer would delete the "members in good standing" requirement from the contract, and substitute a provision stating that union membership is required only to the extent that employees must pay the union's periodic dues and initiation fees. The union also agreed to notify each unit employee in writing that it has modified the contract as described. The charging party objected to the revised settlements because he perceived that the substitute language was as misleading as the expunged language, and that the only appropriate remedy was to reimburse all dues and fees to all employees in the unit.

The Board rejected the charging party's arguments and found that the concerns raised by the Eighth Circuit in *Bloom* had been rectified. The court's decision required expunction of the offending language only because that language was unlawfully interpreted and applied. The Board found the substitute language acceptable not only because it had not been unlawfully interpreted or applied, but also because it alerted the reader that something other than full membership in the union was required.

The Board noted that although the substitute language was not a full recitation of employees' *Beck* rights, the Board does not require this in a collective-bargaining agreement. Rather, under *California*

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[6] 323 NLRB No. 31 (Chairman Gould and Members Browning and Higgins).
[7] *Bloom v. NLRB*, 30 F.3d 1001 (8th Cir. 1994).
[8] *Communications Workers v. Beck*, 487 U.S. 735 (1988).
[9] *Bloom*, 30 F.3d at 1005.

Saw & Knife Works,[10] and *Weyerhaeuser Paper*,[11] the union is obligated to give all unit employees notice of their rights under *General Motors*[12] and *Beck* to refrain from full union membership and to pay only those dues and fees attributable to the union's representational expenses. Accordingly, the Board found that the revised settlement agreements comported with the concerns articulated by the Eighth Circuit, and granted the General Counsel's motion for their approval.

[10] 320 NLRB 224 (1995).
[11] *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 340 (1995).
[12] *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963)

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III

NLRB Jurisdiction

The Board's jurisdiction under the Act, regarding both representation proceedings and unfair labor practices, extends to all enterprises whose operations "affect" interstate or foreign commerce.[1] However, Congress and the courts[2] have recognized the Board's discretion to limit the exercise of its broad statutory jurisdiction to enterprises whose effect on commerce is, in the Board's opinion, substantial—such discretion being subject only to the statutory limitation[3] that jurisdiction may not be declined when it would have been asserted under the Board's self-imposed jurisdictional standards prevailing on August 1, 1959.[4] Accordingly, before the Board takes cognizance of a case, it must first be established that it had legal or statutory jurisdiction, i.e., that the business operations involved "affect" commerce within the meaning of the Act. It must also appear that the business operations meet the Board's applicable jurisdictional standards.[5]

Employer Operating a Racetrack and Casino

In *Prairie Meadows Racetrack & Casino*,[6] the Board asserted jurisdiction in a proceeding involving employees at a racetrack that operated a casino. Three unions sought to represent employees who worked in classifications related exclusively or predominantly to the racetrack's casino. The Board rejected the employer's argument that

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[1] See Secs. 9(c) and 10(a) of the Act and also the definitions of "commerce" and "affecting commerce" set forth in Secs. 2(6) and (7), respectively. Under Sec. 2(2) the term "employer" does not include the United States or any wholly owned Government corporation, any Federal Reserve Bank, any state or political subdivision, any person subject to the Railway Labor Act, or any labor organization other than when acting as an employer. The exclusion of nonprofit hospitals from the definition of employer was deleted by the health care amendments to the Act (Pub. L. 93–360, 88 Stat. 395, effective Aug. 25, 1974). Nonprofit hospitals, as well as convalescent hospitals, health maintenance organizations, health clinics, nursing homes, extended care facilities, and other institutions "devoted to the care of sick, infirm, or aged person[s]," are now included in the definition of "health care institutions" under the new Sec. 2(14) of the Act. "Agricultural laborers" and others excluded from the term "employee" as defined by Sec. 2(3) of the Act are discussed, inter alia, at 29 NLRB Ann. Rep. 52–55 (1964), and 31 NLRB Ann. Rep. 36 (1966).

[2] See 25 NLRB Ann. Rep. 18 (1960).

[3] See Sec. 14(c)(1) of the Act.

[4] These self-imposed standards are primarily expressed in terms of the gross dollar volume of business in question: 23 NLRB Ann. Rep. 18 (1958). See also *Floridan Hotel of Tampa*, 124 NLRB 261 (1959), for hotel and motel standards.

[5] Although a mere showing that the Board's gross dollar volume standards are met is ordinarily insufficient to establish legal or statutory jurisdiction, no further proof of legal or statutory jurisdiction is necessary when it is shown that the Board's "outflow-inflow" standards are met. 25 NLRB Ann. Rep. 19–20 (1960). But see *Sioux Valley Empire Electric Assn.*, 122 NLRB 92 (1958), concerning the treatment of local public utilities.

[6] 324 NLRB No. 91 (Chairman Gould and Members Fox and Higgins).

the proceeding "involved" the horseracing industry, and that, therefore, the Board could not assert jurisdiction. Pursuant to Section 103.3 of the Board's Rules and Regulations and related case law, the Board has declined jurisdiction in proceedings involving the horseracing and dogracing industries.

The *Prairie Meadows* decision concludes that the employer's business presents "a different kind of industry from those as to which the Board had declined to assert jurisdiction" under Section 103.3. The Board held that:

> [T]he enterprise here is predominantly a casino and the employees are predominantly casino employees. In these circumstances, Section 103.3, of the Board's Rules and Regulations does not apply.[7]

The case arose at a racetrack that had, after installing a slot machine casino in its grandstand, salvaged and enhanced its bankrupt racing enterprise and become highly profitable. After opening its casino, the employer increased its staff tenfold and expanded from a seasonal to a year round business, open 24 hours a day. Attendance was due largely to the casino. The casino generated 98 percent of the employer's income in its first year, with partmutuel betting accounting for less than 2 percent.

The vast majority of the employer's job descriptions related solely or predominantly to the casino. The employees petitioned for were craft employees and helpers who maintained the grandstand and casino employees who occupied typical gaming industry classifications.

The Board reasoned that, even though the employer began operations as a racetrack and its purpose in opening the casino was to support the racetrack, "[its] primary enterprise is now its casino operation, with horseracing a comparatively minor aspect of the business."[8] The employees in the units sought had little or no direct involvement with live racing, but rather fell into classifications "not traditionally associated with or functionally integrated with horseracing."[9] The Board further noted that it had regularly asserted jurisdiction over nonracing enterprises at racetracks.

The decision leaves Section 103.3 and related precedent undisturbed as to employees engaged exclusively in horse related or parimutuel pursuits.

Chairman Gould concurred in the result, but noted his disagreement with Section 103.3 and those cases applying Section 103.3. In Chairman Gould's view, there is no basis for the Board's stance of declining jurisdiction over horse and dog racing industries.

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[7] Slip op. at 3.
[8] Slip op. at 2.
[9] Slip op. at 3.

IV

Representation Proceedings

The Act requires that an employer bargain with the representative designated by a majority of its employees in a unit appropriate for collective bargaining. But it does not require that the representative be designated by any particular procedure as long as the representative is clearly the choice of a majority of the employees. As one method for employees to select a majority representative, the Act authorizes the Board to conduct representation elections. The Board may conduct such an election after a petition has been filed by or on behalf of a group of employees or by an employer confronted with a claim for recognition from an individual or a labor organization.

Incident to its authority to conduct elections, the Board has the power to determine the unit of employees appropriate for collective bargaining and to formally certify a collective-bargaining representative on the basis of the results of the election. Once certified by the Board, the bargaining agent is the exclusive representative of all employees in the appropriate unit for collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

The Act also empowers the Board to conduct elections to decertify incumbent bargaining agents that have been previously certified or that are being currently recognized by the employer. Decertification petitions may be filed by employees, by individuals other than management representatives, or by labor organizations acting on behalf of employees.

This chapter concerns some of the Board's decisions during the past fiscal year in which the general rules governing the determination of bargaining representative were adapted to novel situations or reexamined in the light of changed circumstances.

A. Preelection Hearing

In *Mueller Energy Services*,[1] the Board affirmed the Regional Director's dismissal, without a hearing, of a representation petition. The Board found no reasonable cause to believe that the collective-bargaining agreement did not bar the petition, and, therefore, no reasonable cause to believe that a question concerning representation existed. The petitioner claimed that, under *Angelica Healthcare Services*

[1] 323 NLRB No. 143 (Chairman Gould and Members Fox and Higgins).

Group,[2] a determination of whether a contract bar exists can only be made following a hearing. The Board, however, found that the reasoning in *Angelica* does not support this interpretation.

Here, the union did not raise any substantial and material factual issues, and did not even dispute the existence of a valid collective-bargaining agreement barring the petition. Therefore, unlike *Angelica*, where the union established reasonable cause to doubt the existence of a valid collective-bargaining agreement barring the petition, the Board concluded that the Regional Director's dismissal of the petition without a hearing was proper.

In *Mariah, Inc.*,[3] the Board unanimously found that the hearing officer correctly exercised her authority to exclude irrelevant testimony and evidence and to permit the employer to make an offer of proof. In doing so, the Board reiterated that the role of the hearing officer is to ensure a record that is both complete and concise. See, generally, Sections 11184.1 and 11216 et seq. of the Board's Casehandling Manual.

Despite the employer's contention that the Regional Director, under the rationale of *Angelica Healthcare Services Group*,[4] cannot direct an election without first holding an appropriate hearing, the Board felt that the "appropriate hearing" requirement was satisfied in this case. The employer was notified of the hearing and was given the opportunity to present evidence on relevant issues. The fact that certain evidence offered by the employer was rejected on the ground that it was not relevant to the issues involved did not, the Board found, deny the employer an "appropriate hearing" within the meaning of *Angelica Healthcare Services*.

B. *Excelsior* List

In *Mod Interiors*,[5] the Board majority found that an employer failed to comply with the *Excelsior*[6] requirements where the eligibility list contained a significant number of inaccurate addresses, the corrected eligibility list was only available to the union for 8 days before the election, and the election was decided by a close margin.

The employer provided an eligibility list containing the names and addresses of 10 employees. The union notified the Regional Office that 4 of the 10 addresses were incorrect. The employer provided a corrected list 8 days before the election. The tally of ballots showed 4 votes cast for and 5 against the union, with 1 challenged ballot.

The Board majority found, in all the circumstances of the case, that the employer had failed to substantially comply with the requirements of the Board's *Excelsior* rule. Forty percent of the original addresses were inaccurate and the corrected list was received by the union for use in its informational campaign only 8 days before the election.

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[2] 315 NLRB 1320 (1995).
[3] 322 NLRB 586 (Chairman Gould and Members Browning, Fox, and Higgins).
[4] Supra at 1320.
[5] 324 NLRB No. 33 (Chairman Gould and Member Fox; Member Higgins dissenting).
[6] *Excelsior Underwear*, 156 NLRB 1236 (1966).

Noting that the *Excelsior* rule is intended to ensure that all employees are fully informed about the arguments concerning representation and can freely and fully exercise their Section 7 rights,[7] the Board majority found that the union's inability to communicate with nearly half of the unit employees for the week following the date that the list was originally due effectively prevented those employees from obtaining information necessary for the exercise of their Section 7 rights. Thus, the Board majority concluded, in an election like this one, decided by a close margin, this lack of information may have impeded a free and reasoned choice and required setting aside the election.

In dissent, Member Higgins agreed with the Regional Director that the union had failed to establish a basis for setting aside the election. Member Higgins noted that only addresses were inaccurate; the error was not intentional or in bad faith; the employer acted promptly to provide correct addresses; the union did not ask for a delay; and the union had accurate addresses for 8 days before the election.

C. Supervisory Status

In *Children's Farm Home*,[8] the Board affirmed the Regional Director's overruling of the employer's objection and, specifically, his finding that the employer's treatment team leaders (TTLs) were not statutory supervisors. The employer provided psychiatric services for adolescents. The TTL position had been recently created to provide oversight and accountability for adherence to policies and procedures. The Board noted that the Regional Director's finding that the TTLs lacked statutory authority to assign or direct employees was consistent with *Providence Hospital*[9] and *Ten Broeck Commons*,[10] two recent Board decisions following the Supreme Court's opinion in *NLRB v. Health Care & Retirement Corp.*[11] The Board also specifically affirmed the Regional Director's finding that the employer had not provided sufficient evidence to establish that the TTLs possessed statutory authority to discipline employees.

In addition, the Board majority agreed with the Regional Director that the employer did not satisfy its burden of showing that the TTLs exercise independent judgment in evaluating employees or make effective recommendations regarding merit wage increases. In doing so, the majority reaffirmed case precedent that the authority "effectively to recommend" within the meaning of Section 2(11) "generally means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed."[12]

In dissent, Member Higgins concluded that the employer had provided sufficient evidence that the TTLs possessed statutory authority

[7] *North Macon Health Care Facility*, 315 NLRB 359, 360–361 (1994).
[8] 324 NLRB No. 13 (Chairman Gould and Member Fox; Member Higgins dissenting).
[9] 320 NLRB 717 (1996).
[10] 320 NLRB 806 (1996).
[11] 510 U.S. 1037 (1994).
[12] 324 NLRB No. 13, slip op. at 1.

to evaluate employees and effectively recommend merit increases. In his view, such recommendations may be effective even if a higher official conducts an independent investigation of the matter.

D. Single-Facility Presumption

In *Visiting Nurses Assn. of Central Illinois*,[13] the Board affirmed the Regional Director's finding that the petitioned-for, single-location unit of the employer's registered nurses (RNs) constitutes an appropriate unit. In doing so, the Board found it unnecessary to determine whether the Regional Director was correct in finding the employer (VNA) and Memorial Medical Center (MMC) are not a single employer.

The Board determined that the day-to-day interests of RNs at the VNA facility had not been merged with those of RNs at MMC, and that the petitioned-for unit retained its separate identity. Even though MMC's personnel department provided personnel services for the VNA, and VNA and MMC employees received similar benefits, and despite approximately 25 of the 500 RNs "floating" between the two employers, the Board did not find a high degree of contact or interchange between VNA and MMC employees. In addition, the Board noted that the services provided by VNA (home health and hospice care) are distinct from those provided by MMC, and that the employees were separately supervised. For the above reasons, the Board concluded that the employer failed to rebut the presumptive appropriateness of the petitioned-for, single-facility unit of RNs employed by VNA.

In *D&L Transportation*,[14] the Board majority found that a single-location terminal unit in the employer's seven terminal school transportation operation is an appropriate unit. The Board found, contrary to the Acting Regional Director, that the evidence was insufficient to rebut the single-facility presumption at the employer's Shelton, Connecticut terminal.

The Board majority found that the evidence regarding local autonomy supported the presumption because there was local control over hiring, time off, dispatching/assignment, and minor discipline. In addition, not only was there a local terminal manager, but a local dispatcher. Although drivers at each of the seven terminals performed a similar function, the Shelton terminal was only one of three terminals using monitors to care for special education children on the buses, and the Shelton terminal monitors were the highest paid monitors because of their skills. Employees at each location also had separate seniority. There was minimal interchange and the evidence of contact among drivers was insignificant and incidental to transporting passengers to common sites. The Shelton terminal was the farthest in distance from the employer's Prospect, Connecticut headquarters, and the nearest terminal to Shelton had no monitors.

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[13] 324 NLRB No. 8 (Chairman Gould and Members Fox and Higgins).

[14] 324 NLRB No. 31 (Chairman Gould and Member Fox; Member Higgins dissenting).

Member Higgins dissented because the Board majority did not controvert the Acting Regional Director's findings that there were uniform rules covering the employees, centralized administration, and a highly interdependent operation. As to the Board majority's reliance on local autonomy, Member Higgins noted that important matters such as wages and formal discipline were not determined locally, and those matters locally controlled were still decided within centrally determined parameters. He noted that Shelton is not the only location with monitors. As to geographic proximity, Member Higgins stated that the Shelton terminal was not geographically isolated.

Responding to Member Higgins' dissent, the majority noted that the "existence of centralized personnel and labor policies and procedures, or even ultimate responsibility for such matters at a centralized source, does not automatically trump the acknowledged existence of local autonomy."[15] Hence, while seniority is by central policy local seniority, it is locally administered and mandates a local term and condition of employment. The dissent also lumped monitors at two other locations together with Shelton monitors who are the highest paid monitors.

E. Appropriate Unit Issues

In *Overnite Transportation Co. (II)*,[16] the Board restated and explained long held principles governing appropriate unit determinations. Relying on Section 9(b) of the Act and decisions of the Supreme Court, the circuit courts, and the Board, the Board reaffirmed that more than one unit may be "appropriate" at an employer's facility. The Board restated that "[t]here is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be 'appropriate.'" *Morand Bros. Beverage Co.*[17] Even if broader or narrower units than the petitioned-for unit might also be appropriate, the petitioner is not compelled to seek these units provided the petitioned-for unit is an appropriate unit. The unit is appropriate if the employees share a community of interest and the unit does not violate Section 9(c)(5) of the Act, which provides that the "extent to which the employees have organized shall not be controlling."

In the case before the Board, the employer filed a motion to reconsider the Board's prior decision (*Overnite Transportation Co. (I)*)[18] in which the Board reversed the Regional Director and found that a petitioned-for unit of truckdrivers and dock workers excluding mechanics was an appropriate unit. The Regional Director had found that three mechanics shared a sufficient community of interest to require their inclusion in the petitioned-for unit of truckdrivers and dock workers. The employer alleged that the Board had acted incon-

[15] Id., slip op. at 3 fn. 8.
[16] 322 NLRB 723 (Chairman Gould and Members Fox and Higgins).
[17] 91 NLRB 409, 418 (1950).
[18] 322 NLRB 347 (Chairman Gould and Members Fox and Higgins).

sistently in finding petitioned-for units of truckdrivers *excluding* mechanics appropriate at several of its facilities, while finding petitioned-for units of truckdrivers *including* mechanics appropriate at other of its facilities. The employer contended further that the decision in this case was contrary to Section 9(c)(5).

The Board denied the motion and found that it reflected a "fundamental misunderstanding of the Board's decision making regarding appropriate units, and the broad discretion accorded the Board by Section 9(b)."[19] The Board explained that in any particular factual setting more than one unit may be an appropriate unit based on an evaluation of that group's community of interest. "That in the same factual setting the Board may find different units appropriate does not mean . . . that its decision was based on the petitioner's desires or on the extent of its organizing."[20]

The Board rejected the employer's argument regarding Section 9(c)(5) by explaining that "while the statute forbids the *Board* to make extent of organization controlling, it does not forbid a *union* to seek a particular unit that is otherwise appropriate, as the petitioners did here."[21] Section 9(c)(5) was not intended to prohibit the Board from choosing between two appropriate units. It was intended to prevent fragmentation of appropriate units into smaller inappropriate units. Here, either unit was an appropriate unit under Board precedent and the facts, and hence, there was no inconsistency or violation of Section 9(c)(5). The Board also asserted that this case was not controlled by *NLRB v. Lundy Packing*.[22] The Board disagreed with the court's reasoning in that case, but even accepting the rationale, it did not affect the outcome of this case.

F. Election Objections

In *ADIA Personnel Services*,[23] the Board found that "[i]t is properly within the Board's authority to consider, in the context of an objection, conduct which has been dismissed as an 8(a)(1) allegation where the conduct may be found objectionable without determining that it is an unfair labor practice." Thus, the Board found that the employer engaged in objectionable conduct when its president outlined in detail the previously granted regular merit wage increases and annual cash and bonuses, linked their being "frozen" to employees who chose union representation, although the General Counsel had dismissed an allegation that by this same conduct the employer violated Section 8(a)(1). The Board noted that where, as here, it is not necessary to conclude that an employer committed an unfair labor practice in order to find conduct objectionable, the fact that the General Counsel dismissed a charge alleging that by this same conduct the employer violated Section 8(a)(1) "does not require the pro forma

[19] Id. at 726.
[20] Id. at 725.
[21] Id.
[22] 68 F.3d 1577 (4th Cir. 1995), cert. denied mem. 116 S.Ct. 2551 (1996).
[23] 322 NLRB 994 fn. 2 (Chairman Gould and Members Browning and Fox).

overruling of the objection." Quoting *Texas Metal Packers*,[24] the Board explained that "the effect of preelection conduct on an election is not tested by the same criteria as conduct alleged by a complaint to violate the Act." The Board noted that although the General Counsel has unlimited discretion under Section 3(d) as to what complaints will issue, the Board retains total discretion under Section 9(c) regarding representation proceedings. Accordingly, in determining where certain conduct is objectionable, the Board will defer to the General Counsel's dismissal of the unfair labor practice allegations where "the conduct which is alleged to have interfered with the election could only be held to be such interference upon an initial finding that an unfair labor practice was committed."[25] The alleged objectionable conduct that the Board found here was not found to be dependent on any unfair labor practice finding.

In *Circuit City Stores*,[26] the Board majority held that the Employer's individualized distribution of "Vote No" mugs before the election constituted objectionable conduct.

During the 3 days preceding the October 12, 1996 election, the employer's store manager, Robert Mainart, passed out mugs to employees on which was inscribed "Vote No" and "Just Vote No." Mainart would approach each employee individually, shake his hand, ask him to vote no, and hand him a mug. At first the mugs did not contain the employees' names, but Mainart later labeled the remaining mugs with names so as to keep track of employees who had received a mug. Mainart distributed 80 to 90 mugs, of them 70 to 75 had the employees' last names on them. The mugs were left in common sight throughout the facility.

The Board majority found that Mainart's direct supervisory offer of antiunion paraphernalia created a situation in which the employees could reasonably believe that a refusal to accept a mug would be construed as a rejection of the employer's position in the campaign. The majority further found that, albeit not dispositive, the names on the mugs added to the coerciveness of the employer's conduct by leading the employees to reasonably believe that Mainart could identify union supporters by looking at who had accepted a mug as well as those who were displaying or using them. Moreover, while unlike hats, buttons, etc., mugs were not made to be worn, the employees could reasonably believe that information about their union sentiments could be discerned by use or display of the mugs.

In dissent, Member Higgins found that, in view of the totality of the circumstances surrounding Mainart's distribution of the mugs, the employer's conduct was not objectionable. Specifically, in distributing the mugs to the employees Mainart did not solicit the employees to disclose their sentiments for or against the union. They were not asked if they wanted a mug. It was given to them. Thus, the employees were not put in the position of making an observable choice re-

[24] 130 NLRB 279, 280 (1961).
[25] Id.
[26] 324 NLRB No. 19 (Chairman Gould and Member Fox; Member Higgins dissenting.)

garding their union sentiments. Moreover, although the mugs were intended to be used, there was no evidence that it was the employer's intent that the mugs be displayed or used at work or that the employer examined the mugs to gauge the employees' union sentiments.

In *Avis Rent-A-Car*,[27] the Board held contrary to the Regional Director that an employee's allegation of conduct interfering with the election set forth on the Board's standard unfair labor practice form could constitute timely objections to an election.

On May 16, 1997, 7 days after the election was held, the employer filed with the Subregional Office, on the Board's standard unfair labor practice form, allegations pertaining to the conduct of union representative Calvin Warner on the day of the election. The charge alleged that Warner had stayed in areas close to where the polling was taking place, conversed with employees entering the polling area, and that he offered to buy an employee lunch in exchange for the employee's vote.

The Subregional Office docketed the employer's filing as an unfair labor practice charge. On May 19, the Subregion received a letter from the employer referring to its previously filed objections. The Subregion called the employer and explained that it had not received objections to the election. The employer responded that its unfair labor practice charge constituted its objections to the election. The Regional Director found that since the employer's May 16 filing neither called the election results into question nor sought to have the election set aside it was not sufficient to constitute timely filed objections to the election.

The Board found that the employer's May 16 filing, having been received within 7 days of the election, met the requirements of Section 102.69(a) of the Board's Rules and Regulations and was sufficient to constitute timely filed objections. Although the employer's allegations were set out on the standard unfair labor practice form, the allegations clearly communicated that the union engaged in conduct which interfered with the election. Further, the employer's filing was made within 7 days of the election, and within 7 days thereafter, the employer provided evidence in support of its allegations of objectionable conduct. These are actions clearly consistent with an intent to file objections to the election.

In *Gormac Custom Mfg.*,[28] the Board rejected the employer's contention that a representation election won by the union should be set aside on the basis of the union's action before the election in circulating a leaflet with the names of unit employees indicating their support for the union. The employer argued that the leaflet was objectionable as a breach of employee confidentiality and as a deception that fell within the forgery exception to the *Midland* doctrine,[29] because the names had been copied from documents originally signed by employees who were unaware they were authorizing the union to publicize

[27] 324 NLRB No. 81 (Chairman Gould and Members Fox and Higgins).
[28] 324 NLRB No. 80 (Chairman Gould and Members Fox and Higgins).
[29] *Midland National Life Insurance Co.*, 263 NLRB 127, 131 (1982).

their support of the union. In rejecting this argument, the Board noted that the documents originally signed by the employees "expressly authorized the [union] to sign their names to union leaflets." In view of this clear language, the Board deemed irrelevant the employer's claims that oral misrepresentations had been made to employees concerning the use of their names.

In *Atlantic Industrial Constructors*,[30] a Board majority adopted the hearing officer's recommendation to set aside the results of an election where the description of the *Daniel*[31] eligibility formula in the Decision and Direction of Election had led to the employer's confusion over the application of that formula. Because the decision failed to include the specific references to "working" days, the employer mistakenly added the names of two ineligible voters on the *Excelsior* list. Members Fox and Higgins stated:

> In adopting the hearing officer's recommendation to set the election aside on the basis of objections pertaining to the erroneously incomplete description of the voter eligibility formula contained in the Decision and Direction of Election, we note the credited evidence that the Employer relied on that articulation of the formula in preparing an *Excelsior* list including two ineligible voters, and we conclude that such reliance was reasonable. We further note that those two ineligible voters cast unchallenged ballots in the election as a result of the error and that their votes could be determinative.

The majority also noted, contrary to Chairman Gould, that "we would not find the Agency's erroneous statement of the formula harmless simply because the Employer had potential access to labor counsel. . . . Moreover, the Agency had the public responsibility for setting forth clearly, in its Decision and Direction of Election, what the voter eligibility requirements were."

Dissenting, Chairman Gould would overrule all the employer's objections, reject the hearing officer's recommendations to set aside the election, and issue a certification of representative. Citing *Daniel Construction Co.*,[32] he stated:

> Here, the Employer's mistaken inclusion of two ineligible voters on the *Excelsior* list was easily preventable had the Employer's president and bookkeeper simply conferred, during the preparation of the *Excelsior* list, with the experienced labor counsel who has represented the Employer throughout these proceedings. If they had done so, they would have discovered that the *Daniel* formula has always been premised on a concept of "working" days. . . . When an employer freely chooses not to take the opportunity to seek retained counsel's assistance, guidance, and clarification on *Excelsior* list issues, the scale of fairness, in my view, tips in favor

[30] 324 NLRB No. 59, slip op. at 1 (Members Fox and Higgins; Chairman Gould dissenting).
[31] *Daniel Construction Co.*, 133 NLRB 264, as modified at 167 NLRB 1078 (1967), reaffirmed and further modified in *Steiny & Co.*, 308 NLRB 1323 (1992).
[32] Id., slip op. at 2.

of treating the objections to the *Excelsior* list as impermissible postelection challenges.

G. Mail Ballot Elections

In *Willamette Industries, Inc.*,[33] the Board found that the Acting Regional Director erred in directing a mail ballot election. The Board observed that under existing precedent and policy the applicable presumption favors a manual election not a mail ballot election. The sole factor cited by Acting Regional Director in favor of a mail ballot, that the employer's facility is 80 miles from the Board's office, was found to be insufficient to justify a departure from the normal manual election procedure.

Chairman Gould concurred, stating that he agreed with the majority opinion only because the record did not establish that the resources of the Regional Office would be burdened by conducting a manual election.

In *London's Farm Dairy*,[34] the Board majority, over a dissent by Member Higgins, held that the Regional Director did not abuse his discretion in directing a mail ballot election involving drivers working out of four locations. It was noted that two of the locations were great distances from the Regional Office and had small employee compliments. One of those locations did not have a building at which the election could be conducted. At all four facilities employees worked extraordinary and varying alternate-day shifts, some up to 15 hours. Starting times for employees varied as much as 10 hours and for many were predawn. Return times were uncertain. Conducting a manual election, the majority held, would require nearly all day voting sessions at each of the four facilities during each of 2 successive days.

The majority also rejected the employer's offer to alter work schedules and found that a mail ballot election would avoid inconveniencing a significant number of employees which might result from schedule changes.

Contrary to Member Higgins' dissent, the majority found that voting by mail ballot does not compromise the requirement of voting in secret, free of coercion. The suggestion that mail ballot elections have less solemnity and integrity or that they demonstrate less of a commitment to industrial democracy than manual elections was also rejected.

In dissent, Member Higgins, would order a manual election at least at the two facilities which have the greatest number of voters and are quite near to the Regional Office. Although he agreed that a manual election may be difficult, there was no showing that it would be "infeasible." Even assuming that "difficulties" were the touchstone, he noted that the employer was willing to revise employee work schedules to allow Board procedures to work in the optimal way; there was

[33] 322 NLRB 856 (Members Browning, Fox, and Higgins; Chairman Gould concurring).
[34] 323 NLRB No. 186 (Chairman Gould and Member Fox; Member Higgins dissenting).

no evidence that such schedule changes would facilitate voting by only one side; and any inconvenience to employees was speculation.

The "infeasibility" standard recognizes that manual balloting is the preferred method. It has been enormously successful with few instances of invasion of secrecy or voter coercion, and the presence of a Board agent at the election assures the secrecy, integrity, and solemnity of a process uniformly praised. Member Higgins noted that while conservation of Board resources is important, it should not undermine the critical importance of a Board agent at the election. As the "crown jewel of the Board's accomplishments," manual elections should be conducted absent a clear showing of "infeasibility," and "we should willingly utilize our resources to do it in every case."[35]

In *Reynolds Wheels International*,[36] the Board majority denied review of the Regional Director's determination to conduct a mail ballot election. Although the eligible voters were not scattered geographically, the majority found that the voters were scattered in terms of working staggered shifts that were so varied it would, the parties agreed, have taken 3 consecutive days of manual voting to accommodate all eligible voters.

Member Higgins, dissenting, stated that a mail ballot election was a departure from the Board's Casehandling Manual and the Agency's wise tradition favoring manual balloting. He saw no suggestion that a manual ballot was infeasible. He noted that either a Board agent could visit the plant on 3 consecutive days, or all off-duty employees could visit the plant on 1 day; as to the former alternative, Member Higgins stated that budgetary considerations alone are not sufficient to warrant a mail ballot.

[35] Id., slip op. at 4.

[36] 323 NLRB No. 187 (Chairman Gould and Member Fox; Member Higgins dissenting).

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Unfair Labor Practices

The Board is empowered under Section 10(c) of the Act to prevent any person from engaging in any unfair labor practice (listed in Sec. 8) affecting commerce. In general, Section 8 prohibits an employer or a union or their agents from engaging in certain specified types of activity that Congress has designated as unfair labor practices. The Board, however, may not act to prevent or remedy such activities until an unfair labor practice charge has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or any other person irrespective of any interest he or she might have in the matter. They are filed with the Regional Office of the Board in the area where the alleged unfair labor practice occurred.

This chapter deals with decisions of the Board during fiscal year 1997 that involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

A. Employer Discrimination Against Employees

Striker Reinstatement

In *Ancor Concepts, Inc.*,[1] the Board reversed the administrative law judge and found that an employer that engaged in conduct inconsistent with a lawful lockout by informing the union, on an unconditional offer to return to work, that it had permanently replaced the employees and would place them on a preferential recall list, may not rely on *Harter Equipment*[2] as a justification for refusing to reinstate strikers. Instead, the Board held, a *Harter* defense is available only to employers that refrain from conduct inconsistent with an economic lockout.

After the respondent's employees went on strike, the respondent rejected an offer by the union to return to work under the terms of the previous contract, insisting that such an arrangement would deny it the protection of a full agreement with a no-strike clause. The respondent refused to reinstate the employees and operated the facility with replacement employees. In November 1990, the union "restated" by letter its unconditional offer to return to work on behalf of the employees. The respondent's counsel replied by letter that the strikers' positions had been filled by permanent replacements and that

[1] 323 NLRB No. 134 (Chairman Gould and Members Fox and Higgins).

[2] 280 NLRB 597 (1986), petition for review denied sub nom. *Operating Engineers Local 825 v. NLRB*, 829 F.2d 458 (3d Cir. 1987).

it would, at the union's request, place them on a recall list. At the hearing the respondent stipulated that the replacements were temporary.

The Board found that the respondent's bargaining position was legitimate—that it did not wish to endure another strike by taking the employees back without a no-strike clause—and that it had given the union adequate notice that it was locking out the employees. In this regard, the Board noted that an employer is not obligated to employ "magic words" to announce a lockout. The Board found further, however, that an employer seeking to use *Harter* to justify continuing to refuse to reinstate strikers who have not been permanently replaced must act in a manner consistent with a lawful lockout, and that the respondent failed to do so when it notified the union that the employees had been permanently replaced. The Board noted that without a requirement that employers engage in conduct consistent with a lawful lockout after one has commenced, employees engaged in an economic struggle with their employer would be unable intelligently to evaluate their bargaining position, and that in this case the respondent's announcement that the employees had been permanently replaced could have reasonably confused the employees in evaluating their bargaining strength. The Board ordered that the strikers be reinstated with backpay to begin from the date of the respondent's letter to the union.

In *Cook Family Foods*,[3] the Board found that an employer's discharge of nine strikers for damaging or attempting to damage property was not discriminatory and, thus, did not violate Section 8(a)(3) and (1) of the Act, even though the employer had not discharged two supervisors who had examined and aimed a rifle in the plant parking lot within sight of picketers.

Eight of the discharged strikers had engaged in activities that had damaged or threatened to damage property, such as placing nails or caltrops (devices with four projecting spikes) on the road leading to the respondent's plant or slashing tires on a nonstriking employee's vehicle. The ninth discharged striker had tried to run off the road a car carrying nonstriking employees. No party excepted to the administrative law judge's finding that this misconduct was sufficiently serious to justify denial of reinstatement to the nine strikers.

The conduct of the two supervisors at issue was that, during a work break, they had gone to a car in the respondent's parking lot to examine a rifle that an employee was offering for sale. They took the rifle from the car, examined it, and sighted it on a target to the northeast. Four strikers, who were maintaining the union's picket line about 140 yards southwest of the car, witnessed the supervisors' actions and called the police. The respondent subsequently issued written warnings to the supervisors for "using poor judgment in displaying a gun in front of pickets."

Disagreeing with the judge, the Board found that the supervisors' actions, which were undertaken solely for the purpose of examining

[3] 323 NLRB No. 62 (Chairman Gould and Members Fox and Higgins).

a rifle that was for sale, were not of equal or greater severity than the discharged strikers' misconduct, which was intended to cause property damage. Unlike the judge, the Board found cases concerning nonstrikers displaying firearms to pickets while crossing picket lines distinguishable, as the supervisors' handling of the rifle in this case occurred a considerable distance away from the picket line, involved no interaction with the pickets, and was for a purpose unrelated to the picketing. Accordingly, the Board concluded that the respondent's failure to discharge the two supervisors for this conduct did not render the respondent's discharge of the nine strikers discriminatory.

B. Employer Bargaining Obligation

1. Mandatory Bargaining Subject

In *Colgate-Palmolive Co.*,[4] the Board affirmed the administrative law judge's decision that the employer violated Section 8(a)(1) and (5), by failing and refusing to bargain with the union. The judge, relying, inter alia, on *Ford Motor Co. v. NLRB*,[5] found that the employer's installation and continued use of hidden surveillance cameras in the workplace is a mandatory subject of bargaining. The judge also found that the union has a statutory right to engage in collective bargaining over circumstances under which hidden cameras may be activated, the general areas in which they may be placed, and how employees will be disciplined if found to have engaged in improper conduct.

This case arose after an employee, while performing maintenance duties, observed a hidden camera in an air vent in the men's restrooms at the respondent's facility. The employee brought this to the attention of the union steward and at least three other unit employees, all of whom observed the camera in the air vent. The following day, the union's president, accompanied by the union steward, went to observe the camera but they discovered that it had been removed. A grievance was filed and a hearing held, at which the employer asserted that it had the absolute right to install hidden surveillance cameras whenever it suspected theft or other improper conduct. The employer also stated that it immediately removed the camera from the restroom when it was discovered, and that any violation of the contract was remedied by the camera's removal.

In *Ford Motor Co. v. NLRB*, the Supreme Court described mandatory subjects of bargaining as such matters that are "plainly germane to the 'working environment'" and "not among those 'managerial decisions, which lie at the core of entrepreneurial control.'"[6] As the judge found, the installation of surveillance cameras is both germane to the working environment and outside the scope of managerial deci-

[4] 323 NLRB No. 82 (Chairman Gould and Members Fox and Higgins).

[5] 441 U.S. 488 (1979).

[6] Id. at 498, quoting from *Fibreboard Corp. v. NLRB*, 379 U.S. 203, 222–223 (1964) (Stewart, J., concurring).

sions lying at the core of entrepreneurial control. The Board, in agreement with the judge, stated:

> As to the first factor—germane to the working environment—the installation of surveillance cameras is analogous to physical examinations, drug/alcohol testing requirements, and polygraph testing, all of which the Board has found to be mandatory subjects of bargaining. They are all investigatory tools or methods used by an employer to ascertain whether any of its employees has engaged in misconduct.
>
> . . . .
>
> With regard to the second criterion . . . . The installation and use of surveillance cameras in the workplace are not among that class of managerial decisions that lie at the core of entrepreneurial control. The use of surveillance cameras is not entrepreneurial in character, is not fundamental to the basic direction of the enterprise, and impinges directly upon employment security. It is a change in the Respondent's methods used to reduce workplace theft or detect other suspected employee misconduct with serious implications for its employees' job security, which in no way touches on the discretionary "core of entrepreneurial control."[7] [Footnotes omitted.]

The Board also adopted the judge's finding that the union did not waive its statutory right to demand bargaining over the continued, future use of surveillance cameras. The employer asserted that it had an established past practice of using hidden surveillance cameras in the workplace and that the union's failure to demand bargaining on prior occasions over the employer's installation of such cameras constituted a waiver. Here, the alleged unlawful conduct is limited to the respondent's refusal to honor the union's request to bargain about the future use of surveillance cameras in the workplace. The Board has held that a union's acquiescence in an employer's past actions on a particular subject does not, without more, constitute a waiver of the right to bargain. Further, there is no contention that the union otherwise waived its statutory bargaining rights. On that basis, the Board concluded that the union did not waive its right to bargain over the future installation of surveillance cameras in the employer's workplace.

2. Withdrawal of Recognition

In *Bozeman Deaconess Hospital*,[8] the Board, in finding that the respondent violated Section 8(a)(1) and (5) by withdrawing recognition from the union, making unilateral changes in terms and conditions of employment, and dealing directly with unit employees, rejected the respondent's contention that the registered nurses (RNs) comprising the unit are supervisors under the Act. The Board found that the RNs assign tasks to and direct the work of licensed practical nurses

[7] 323 NLRB No. 82, slip op. at 1–2.
[8] 322 NLRB 1107 (Chairman Gould and Members Browning, Fox, and Higgins).

(LPNs), nurses aides, and unit clerks, in accordance with their respective legal scopes of practice, which are clearly defined. The Board noted that the LPNs and nurses aides are familiar with their tasks and require little direction in accomplishing them. Although the Board recognized that, as professional employees, the RNs are responsible for making expert judgments concerning the needs of patients, it concluded that their additional responsibility for directing employees in performing tasks to care for the patients is a routine matter and does not require the independent judgment characteristic of statutory supervisors. The Board found it unnecessary to pass on whether the additional duties performed by the RNs when serving as charge nurses involve the exercise of supervisory authority under the Act. Because not all unit RNs serve as charge nurses and these duties are assigned on a sporadic and rotational basis, the Board found that the charge nurse responsibilities would not affect the unlawfulness of the respondent's conduct.

In *I.O.O.F. Home of Ohio, Inc.*,[9] the Board held that the employer violated Section 8(a)(5) by withdrawing recognition from the union because the employer had reconsidered the status of its licensed practice nurses (LPNs) and believed them to be supervisors.

In July 1994, the employer consented to a representation election in a unit of LPNs. The union won the election, the employer filed no objections, and the union was certified. After bargaining commenced, the employer notified the union that it was withdrawing recognition because it believed its LPNs to be supervisors.

The Board held that under *Pittsburgh Plate Glass Co. v. NLRB*,[10] the employer was not entitled to relitigate in the 8(a)(5) proceeding issues that were or could have been litigated in the representation proceeding.

The employer relied on *Oakland Press*,[11] which the Board found distinguishable. The Board recognized that in *Oakland Press* it held that the employer was not estopped from raising the supervisory issue regardless of earlier positions. But, the Board noted, the principle precluding relitigation of matters that were or could have been raised in a prior representation proceeding was not implicated because the representation petition was withdrawn in *Oakland Press* before the Regional Director or Board had ruled on the supervisory issue. Thus, according to the Board, there was "no conflict between *Oakland Press*, which emphasizes that acts of parties . . . cannot override the Board's obligation to comply with the Act, and the *Pittsburgh Plate Glass* rule, which discourages piecemeal litigation of representation matters once they have been or could have been litigated."[12]

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[9] 322 NLRB 921 (Chairman Gould and Members Browning, Fox, and Higgins).

[10] 313 U.S. 146, 162 (1941).

[11] 266 NLRB 107 (1983), enfd. 735 F.2d 969 (6th Cir. 1984), cert. denied sub nom. *Teamsters Local 372 v. NLRB*, 470 U.S. 1051 (1985).

[12] *I.O.O.F. Home*, supra at 922.

In *Quazite Corp.*,[13] the Board, after accepting the court's remand,[14] found on the particular facts of this case that there was an insufficient nexus between the respondent's unlawful conduct and the individual petitions the employees signed stating that they no longer desired union representation to establish that the respondent's unfair practices tended to cause the employees' dissatisfaction with the union.

The evidence shows that, after the parties' collective-bargaining agreement expired, they began negotiations for a successor agreement in November 1991 and continued to bargain until March 1992, when negotiations ceased. In June 1992, the union called a strike that lasted about 2 months. From mid-to-late July 1992, 37 of the 68 bargaining unit employees signed individual cards stating that they no longer wanted the union to represent them. On August 4, the respondent withdrew recognition based on this evidence.

Although the respondent had committed 8(a)(1) and (5) violations before it withdrew recognition from the union, the Board noted that these violations had ended by January 1992 and that the parties had continued to bargain for 2 more months until March. The Board also stressed the administrative law judge's finding in this case that the respondent had not engaged in bad-faith bargaining during the contract negotiations. Thus, the Board found that the violations occurring before negotations ended did not taint the respondent's subsequent withdrawal of recognition.

Regarding two additional violations that the respondent committed during the strike, the Board found that the respondent's threats to retaliate against two strikers, although serious in nature, were isolated, particularly since they involved employees who, at the time, were not working at the respondent's facility. The Board also noted that the two affected employees were not among those employees who signed the petitions showing loss of majority support and that there is no evidence the threats were disseminated to other employees.

Thus, applying the test of *Master Slack*,[15] the Board found, on the particular facts here, that the respondent lawfully withdrew recognition from the union based on its good-faith doubt that the union had lost majority support. The Board noted, however, that this holding does not necessarily mean that it will find that employers have lawfully withdrawn recognition in subsequent cases where they have committed unfair labor practices which are similarly removed in time from the evidence showing the employees' dissatisfaction with the union.

3. Successor Employer

In *Advanced Stretchforming International*,[16] the Board found that a *Burns*[17] successor forfeited its right under *Spruce Up Corp.*[18] to set

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[13] 323 NLRB No. 80 (Chairman Gould and Members Fox and Higgins).
[14] 87 F.3d 493 (D.C. Cir. 1996).
[15] *Master Slack Corp.*, 271 NLRB 78, 84 (1984).
[16] 323 NLRB No. 84 (Chairman Gould and Member Fox; Member Higgins concurring).
[17] *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).
[18] 209 NLRB 194 (1974), enfd. per curiam 529 F.2d 516 (4th Cir. 1975).

initial terms of employment by telling the predecessor employees that they would all be hired but that there would be no union. The "no union" statement was found to be a violation of Section 8(a)(1) and the respondent's subsequent unilateral setting of initial terms of employment was found to violate Section 8(a)(5).

The Board based its decision on *U.S. Marine Corp.*,[19] a case in which a respondent violated Section 8(a)(3) by discriminatorily refusing to hire a majority of the predecessor's employees in order to avoid a bargaining obligation under *Burns*. The Board in *U.S. Marine* explained that in those circumstances the successor's *Spruce Up* right to set initial employment terms is forfeited, noting that it would be contrary to statutory policy to "confer *Burns* rights on an employer that has not conducted itself like a lawful *Burns* successor because it has unlawfully blocked the process by which the obligations and rights of such a successor are incurred."

The Board applied the same rationale in *Advanced Stretchforming* and held that "[a] statement that there will be no union serves the same end as a refusal to hire employees from the predecessor's unionized work force. It 'block[s] the process by which the obligations and rights of such a successor are incurred'" and warrants forfeiture of the right to set initial employment terms.

Member Higgins concurred with the result but with different rationale. Although he agreed that the "no union" statement was lawful, he disagreed that the statement, by itself, warranted forfeiture of *Spruce-Up* rights. But where, as here, the respondent "acted on" the unlawful statement by thereafter refusing the union's request to bargain, Member Higgins agreed that *Spruce-Up* rights were lost and that the unilateral setting of new employment terms violated Section 8(a)(5) and (1).

4. Duty to Furnish Information

In *GTE California, Inc.*,[20] the Board found that the respondent did not violate Section 8(a)(5) and (1) of the Act by refusing to provide the union with the name, address, and unlisted telephone number of a customer whose complaint had led to an employee's discharge, because the respondent arranged for, and the union agreed to, interviewing the customer over the telephone without her name, address, or telephone number being disclosed.

Following a customer's complaint about a directory assistance operator, the respondent discharged an employee who it believed to be that operator. The union filed a grievance over the discharge and repeatedly requested the complaining customer's name, address, and telephone number. The customer, who had an unlisted telephone number, denied the respondent permission to release her name, address, and telephone number to the union.

Subsequently, the respondent obtained the customer's agreement to speak to the union on the telephone, provided that the respondent

[19] 293 NLRB 669, 672 (1989).

[20] 324 NLRB No. 78 (Chairman Gould and Member Higgins, Member Fox concurring).

would dial her telephone number and not release her address or telephone number to the union. Although the union had initially rejected a proposal to interview the customer in this manner, it ultimately agreed. Consequently, the respondent's representative and the union's representative telephoned the customer and, once the customer was on the line, the respondent's representative left the room. The union's representative then had a private conversation with the customer lasting about 20 minutes. The union did not thereafter request any additional information about the customer or seek any further contact with her.

In finding that the respondent's refusal to provide the customer's name, address, and telephone number to the union did not violate Section 8(a)(1), the Board majority found that, because the customer had an unlisted telephone number, the respondent established a preexisting confidentiality interest in the customer's name, address, and telephone number. The majority further found that, in arranging for the union to interview the customer in a telephone call placed by the respondent, the parties had reached an accommodation between the union's information interests and the respondent's confidentiality interests that succeeded in furthering both parties' interests. This accommodation allowed the respondent to realize its objective of maintaining the confidentiality of the customer's name, address, and telephone number while enabling the union to achieve its objective of interviewing the customer in carrying out its responsibilities as the employee's exclusive bargaining representative. As the Board's decision in *Pennsylvania Power Co.*[21] called for parties to bargain toward accommodation between a union's information needs and an employer's legitimate confidentiality interest and the parties had, in fact, bargained for and achieved such an accommodation here, the majority concluded that the respondent did not violate Section 8(a)(5) and (1) by refusing to provide the union with the customer's name, address, and telephone number.

In concurring, Member Fox found that the respondent failed to show a confidentiality interest in the customer's name, address, and telephone number. In agreeing to dismiss the complaint, she relied on the parties' accommodation that permitted the union to interview the complaining customer and fulfill its representational functions in this fashion.

C. Union Interference with Employee Rights

Even as Section 8(a) of the Act imposes certain restrictions on employers, Section 8(b) limits the activities of labor organizations and their agents. Section 8(b)(1)(A), which is generally analogous to Section 8(a)(1), makes it an unfair labor practice for a union or its agents to restrain or coerce employees in the exercise of their Section 7 rights, which generally guarantee employees freedom of choice with respect to collective activities. However, an important proviso to Sec-

[21] 301 NLRB 1104 (1991).

tion 8(b)(1)(A) recognizes the basic right of a labor organization to prescribe its own rules for the acquisition and retention of membership.

The Board faces a continuing problem of reconciling the prohibitions of Section 8(b)(1)(A) with the proviso to that section. It is well settled that a union may enforce a properly adopted rule reflecting a legitimate interest if it does not impair any congressional policy imbedded in the labor laws. However, a union may not, through fine or expulsion, enforce a rule that "invades or frustrates an overriding policy of the labor law."[22] During the fiscal year, the Board had occasion to consider the applicability of Section 8(b)(1)(A) as a limitation on union action and the types of those actions protected by the proviso to that section.

1. Obligation to Provide a *Beck* Objector with Financial Information

In *Carpenters Local 943 (Oklahoma Fixture Co.)*,[23] the Board held that the union violated Section 8(b)(1)(A) of the Act by failing to provide the charging party, who had registered a *Beck*[24] objection, with information concerning the percentage of the reduction in fees for objecting nonmembers, the basis for the union's calculation, and the right to challenge these figures.

Board jurisprudence interpreting the Supreme Court's *Beck* decision holds that if a nonmember employee chooses to file a *Beck* objection the employee must be apprised by the union of the following information: the percentage of the reduction in fees for objecting nonmembers, the basis for the union's calculation, and the right to challenge these figures. "The purpose for providing objectors with this information is to allow an employee to decide whether there is any reason to mount a challenge to the union's dues reduction calculations."[25]

The Board in *Oklahoma Fixture* considered and rejected the union's argument that it need not have provided such financial information to the charging party, because it informed him that he could pay the equivalent of full dues to a mutually agreed-on charity. The Board observed that a union is not required to provide a *Beck* objector with financial information, in circumstances where the union expressly waives the objector's obligations to pay dues under the union-security clause. The Board explained that "[i]n this case, however, the [Union did] not waive[] the [Charging Party]'s obligations to pay any amounts under the union-security clause; rather, it is still requiring him to pay the equivalent of full dues and fees."[26] The Board concluded that the union's use of a charitable alternative cannot serve to foreclose the requirement that it provide objectors with *Beck*-related financial information. The Board accordingly concluded that the union unlawfully failed to provide the charging party with financial

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[22] *Scofield v. NLRB*, 394 U.S. 423, 429 (1969); and *NLRB v. Shipbuilders*, 391 U.S. 418 (1968).
[23] 322 NLRB 825 (Chairman Gould and Members Browning and Fox).
[24] *Communications Workers v. Beck*, 487 U.S. 735 (1988).
[25] 322 NLRB 825.
[26] Id.

information to allow him to decide whether to mount a challenge to the union's dues reduction calculations.

2. Duty of Fair Representation

In *Government Employees Local 888 (Bayley-Seton Hospital)*,[27] the Board reversed its prior decision[28] and dismissed the complaint, finding that the respondent union, after being decertified, did not breach its duty of fair representation by failing to pursue the arbitration of grievances that arose during its tenure as exclusive bargaining representative.

The administrative law judge rejected the respondent union's contention that judicial precedent had led it reasonably to believe that it no longer had a duty to complete its processing of the grievances through arbitration because of the intervening certification of another union, and he therefore found that the respondent violated Section 8(b)(1)(A) of the Act. In so doing, the judge relied on Section 301 suits requiring employers to arbitrate grievances even when the union was decertified,[29] or otherwise lost its majority status,[30] and other court holdings indicating that not all substantive contract rights are extinguished by such changes in relationships as expiration of the contract[31] or even decertification of the bargaining representative.[32] The judge also relied on two Board decisions: *Missouri Portland Cement Co.*,[33] in which the Board held that an employer, even after lawfully closing its facility, terminating all employees, and reopening with a new work force, had a duty to complete unfinished business by meeting with the former union for the limited purpose of resolving the grievances that were pending at the time of the dissolution of the unit; and *Arizona Portland Cement Co.*,[34] the Board's first square holding that an employer is not obligated to arbitrate contractual grievances with a newly certified union rather than the contracting union, because of the consensual nature of arbitration.[35]

The Board, noting that at the time of the respondent union's conduct, in 1989, the Board had not yet decided *Arizona Portland*, found that the respondent union acted without notice of any legal precedents holding that the successor union would be unable to compel arbitration, and in reliance on a court decision which indicated that a union displaced as bargaining representative through an election had no grievance processing obligation after the election.[36] The Board there-

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[27] 323 NLRB No. 123 (Chairman Gould and Members Fox and Higgins).

[28] *Government Employees Local 888 (Bayley-Seton Hospital)*, 308 NLRB 646 (1992). On March 26, 1993, the D.C. Court of Appeals granted the Board's unopposed motion to dismiss the respondent's petition for review without prejudice and remanded the case to the Board for reconsideration.

[29] *Auto Workers v. Telex Computer Products*, 816 F.2d 519 (10th Cir. 1987); *United States Gypsum Co. v. Steelworkers*, 384 F.2d 38 (5th Cir. 1967), cert. denied 389 U.S. 1042 (1968); and *Local 386 Engineers v. Western Electric Co.*, 359 F.Supp. 651, 654 (D.N.J. 1973).

[30] *John Wiley & Sons v. Livingston*, 376 U.S. 543 fn. 5 (1964).

[31] *Nolde Bros., Inc. v. Bakery Workers*, 430 U.S. 243, 251 (1977).

[32] *Telex*, supra at 523, citing *Gypsum*, supra at 45, 46.

[33] 291 NLRB 1043 (1988).

[34] 302 NLRB 36 (1991).

[35] Id., citing *Indiana & Michigan Electric Co.*, 284 NLRB 53, 55–56 (1987).

[36] *Teamsters v. Flight Attendants*, 864 F.2d 173 (D.C. Cir. 1988), affg. in part 663 F.Supp. 847 (D.D.C. 1987).

fore concluded from the unclear state of the law, that the respondent "could have reasonably believed that its 'actions were fully consistent with established law' defining the duty of fair representation"[37] and that its decision to abandon arbitration of the grievances was neither arbitrary, discriminatory, nor taken in bad faith.

Chairman Gould joined in the decision to dismiss the complaint, but expressed no view "regarding whether the duty of fair representation is implicated by a union's intentional failure to pursue the arbitration of grievances which arose during its tenure as representative after its decertification."

In concurring, Member Higgins believes that this result is consistent with the "retroactivity" principles of *Chevron Oil Co. v. Huson*.[38]

D. Remedial Order Provisions

In *Rochester Mfg. Co.*,[39] the Board adopted the administrative law judge's finding that the union violated Section 8(b)(1)(A) of the Act by failing to notify unit employees, when it first sought to obligate them to pay fees and dues under a union-security clause, of their right under *NLRB v. General Motors Corp.*[40] to be and remain nonmembers; and of the right of nonmembers under *Communications Workers v. Beck*[41] to object to paying for union activities not germane to the union's duties as bargaining agent, and to obtain a reduction in fees for such activities. Accordingly, the Board also adopted the judge's finding that the respondent union violated Section 8(b)(1)(A) and (2) by threatening an employee with reprisals because of his failure to join the union and pay full initiation fees and membership dues and by attempting to cause the employee to pay full initiation fees and dues without providing him with notice concerning his rights as a nonmember under *Beck*.

In so ruling, however, the Board reversed the judge's finding that the respondents violated the Act by entering into and maintaining a union-security agreement requiring "membership in good standing," and, pursuant to the agreement, telling employees that they had to be "members" of the union, and that "membership" and payment of "dues" can be made a condition of employment. The Board reasoned that the "membership in good standing" provision is not unlawful on its face, and that it is clarified by the notices required under *Beck* and *NLRB v. General Motors*.

The Board found no affirmative obligation on the part of employers to "spell out for employees the precise extent of the union-security obligation." Member Higgins would find that a union is required to give *General Motors* and *Beck* notices not only at the time when union-security obligations attach, but also annually, in circumstances

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[37] *Electrical Workers IUE Local 444 (Paramax Systems) v. NLRB*, 41 F.3d 1532, 1534 (D.C. Cir. 1994).
[38] 404 U.S. 97 (1971).
[39] 323 NLRB No. 36 (Chairman Gould and Members Fox and Higgins).
[40] 373 U.S. 734 (1963).
[41] 487 U.S. 735 (1988).

when a union requires that *Beck* objections be renewed each year in order to remain valid.

The respondent employer and the respondent union were parties to a collective-bargaining agreement which provided that "[t]he Employer agrees that as a condition of continued employment, all present and future employees . . . shall become and remain members in good standing in [the Union]." Pursuant to that agreement, the respondent employer sent to all employees, with their paychecks, a memorandum and a union authorization form which "must be filled out." The memorandum further informed employees that "[d]ues payment is required for your continued employment." The respondent employer later sent a followup reminder to employees who had not returned completed authorization cards that "membership [in the Union] is a requirement for continued employment." Both the respondent employer and the respondent union threatened one employee, who did not sign an authorization card, with unspecified reprisals and termination if he failed to join the union. The employer also deducted union membership dues from the employee's wages without authorization, but refunded the dues amount, along with a written acknowledgement of the error.

In determining the appropriate status quo ante remedy for the notice violation, the Board addressed a remedial issue not addressed in its decisions in *California Saw & Knife Works*[42] and *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*,[43] i.e., what is the remedy when all unit employees are either uninformed or misinformed about their rights under *General Motors* and *Beck*? The Board reasoned that the unit employees were kept ignorant of their *General Motors* and *Beck* rights by reason of the respondent union's failure ever to provide such information. Thus, the Board found that it is "not feasible to determine in hindsight whether individual employees, had they been fully informed of their rights under *General Motors* and *Beck*, would have chosen not to join or remain in the union and then filed *Beck* objections as nonmembers." Because the Board found it impossible to establish the identity of employees who, "having reflected on the relative advantages of union membership or nonmembership," would have exercised their *General Motors* and *Beck* rights, it ordered the respondent union to give all unit employees such notice. The notices must contain "sufficient information, for each accounting period covered by the complaint, to enable those employees who were in the bargaining unit during those accounting periods" to decide whether to object.

For employees "who, with reasonable promptness after receiving their notices, elect nonmember status and make *Beck* objections with respect to one or more of the accounting periods covered by the complaint," the Board ordered the respondent union to "process their objections nunc pro tunc, as it would otherwise have done, in accordance with the principles of *California Saw & Knife*." Thus, the Board

[42] 320 NLRB 224 (1995).
[43] 320 NLRB 349 (1995).

ordered the respondent union to reimburse objecting nonmember employees for the reduction in their dues and fees, if any, for nongermane activities during the applicable accounting periods covered by the complaint, subject to the union's ability at the compliance stage to cut off its liability by showing that an employee was given the required notices and declined to exercise his rights.

The Board declined to order the respondent employer to make any additional reimbursements of money deducted pursuant to the coercively obtained checkoff authorizations, however, because the affected employees were subject to a lawful union-security clause obligating them to pay dues.

The Board also adopted the judge's finding that the respondent employer violated Section 8(a)(1), (2), and (3) by conditioning employment on the execution of checkoff authorization forms, and further violated Section 8(a)(1) by threatening an employee with unspecified reprisals and termination because of his failure to join the union, and by deducting union membership dues from the employee's wages without authorization.

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VI

Supreme Court Litigation

During fiscal year 1997, the Supreme Court decided, on the merits, no cases involving the Board. The Court did, however, grant the company's petition for certiorari in *Allentown Mack*.[1] The issue presented by the case is whether the Board's rule,[2] that an employer commits an unfair labor practice by polling its employees about their continued support for an incumbent union when, prior to taking the poll, the employer does not have a good-faith reasonable doubt as to the union's majority status, is a rational construction of the National Labor Relations Act.

In the *Allentown* case, the Board, applying its polling standard, found that the company violated Section 8(a)(1) of the Act by polling its employees at a time when it had an objective basis for believing that only 20 percent of the unit no longer wished to be represented by the incumbent union. The D.C. Circuit upheld the Board's polling standard and enforced the Board's Order.[3] In upholding the Board's standard, the D.C. Circuit created a conflict with decisions of the Fifth, Sixth, and Ninth Circuits, which have rejected the Board's polling standard. Under the standard adopted by those courts, an employer may poll its employees about their support for the incumbent union if it has "substantial, objective evidence of a loss of union support (even if that evidence is not sufficient by itself to justify withdrawal [of recognition])."[4] The Supreme Court granted certiorari to resolve this conflict of decisions, and heard oral argument on October 15, 1997.

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[1] *Allentown Mack Sales & Service v. NLRB*, No. 96-795, cert. granted March 3, 1997.

[2] See *Texas Petrochemicals Corp.*, 296 NLRB 1057 (1989), remanded as modified 923 F.2d 398 (5th Cir. 1991).

[3] *Allentown Mack Sales & Service v. NLRB*, 83 F.3d 1483 (D.C. Cir. 1996).

[4] *NLRB v. A. W. Thompson, Inc.*, 551 F.2d 1141, 1145 (5th Cir. 1981); see also *Mingree Restaurant v. NLRB*, 736 F.2d 1295, 1299 (9th Cir. 1984); and *Thomas Industries v. NLRB*, 687 F.2d 863, 867 (6th Cir. 1982).

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VII

Enforcement Litigation

A. Jurisdiction

In *Saipan Hotel Corp. v. NLRB*,[1] the Ninth Circuit upheld both the Board's finding that nonresident workers lawfully employed by a hotel in the Commonwealth of the Northern Mariana Islands (CNMI) were employees within the meaning of Section 2(3) of the Act and the Board's certification of a bargaining representative for a unit including such nonresident workers as well as resident workers. The Covenant establishing the CNMI provided that most Federal laws, including the Act, would be applicable in the CNMI "as they are applicable to the several States," but permitted the CNMI to retain control over immigration. The CNMI had enacted legislation permitting the employment of nonresident workers only in positions for which resident workers (United States citizens or nationals, their immediate relatives, and residents of the Federated States of Micronesia) were not available; requiring that nonresident workers be employed only under individual contracts not more than 1 year in length and renewable only after unsuccessful attempts to find a resident worker for the position; and regulating in detail the terms and conditions of employment of nonresident workers. The employer contended that the foregoing legislation precluded the Board from asserting jurisdiction over nonresident workers.

In sustaining the Board, the court noted that it had previously upheld the Board's assertion of jurisdiction over resident workers in the CNMI,[2] and that the Supreme Court had held that Section 2(3) of the Act makes the Act applicable to all employees not within one of six specific exemptions; aliens, whether legal or illegal, are not within any of those exemptions.[3] Because the Act, as applied in the States, does not distinguish between citizens and aliens, the only defensible construction of the term "employee" is that it likewise includes both resident and nonresident workers in the CNMI. The court observed that such a construction does not necessarily conflict with the CNMI legislation described above. Indeed, the Board's assertion of jurisdiction serves the purposes of that legislation—to protect residents' job security by giving them preference in employment and to

[1] 114 F.3d 994, enfg. 320 NLRB 192 (1995). The Ninth Circuit, in an unpublished memorandum, 116 F.3d 485, also enforced the Board's Order in *Mayfield Beach Hotel*, 321 NLRB 116 (1996), in which essentially the same issues were raised.

[2] *Micronesian Telecommunications Corp. v. NLRB*, 820 F.2d 1097 (9th Cir. 1987).

[3] *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984).

ensure that employment of nonresidents does not impair resident workers' wages and working conditions—by eliminating the incentive to hire nonresidents that would exist if only resident workers were entitled to the protection of the Act.[4]

The court also held that the Board did not abuse its discretion by retroactively applying its decision in *Management Training Corp.*,[5] under which it asserts jurisdiction over government contractors even though a governmental entity extensively regulates the terms of their workers' employment. Although the Board had previously held in *Res-Care, Inc.*,[6] that it would not assert jurisdiction where such governmental regulation precluded the contractor from engaging in meaningful bargaining over its employees' wages and working conditions, it had applied this rule only to government contractors or to employers receiving significant funding from the Government. Because the employer here fell into neither category, but was merely subject to the same degree of regulation as every private employer in the CNMI who employed nonresident workers, it could not reasonably have relied on *Res-Care*. Accordingly, applying *Management Training* in this case did not result in any manifest injustice.[7]

B. Employer's Right to Control Its Property

Since the Supreme Court's decision in *Lechmere, Inc. v. NLRB*,[8] the courts of appeals have continued to show interest in the issue of access to an employer's property. During the year, three circuits reviewed and agreed with the Board's conclusions that, in the circumstances presented, the employers violated the Act by restricting access to their premises by employees or nonemployees. In *Lucile Salter Packard Children's Hospital at Stanford v. NLRB*,[9] the employer, a hospital, permitted certain outside organizations, including a home and automobile insurer, to solicit employees at tables or booths adjacent to the hospital's public cafeteria, but barred access by union representatives for the same purpose. The District of Columbia Circuit agreed with the Board that, under *Lechmere*, the employer violated Section 8(a)(1) by "den[ying] union access to its premises while allowing similar distribution or solicitation by nonemployee entities other than the union."[10] In so holding, the court rejected the argument that the employer considered the permitted solicitations to be employee benefits, stating that "[t]o allow such a subjective criterion to govern access would eviscerate section 8(a)(1)'s purpose of preventing discriminatory treatment of unions."[11]

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[4] 114 F.3d at 996–997.
[5] 317 NLRB 1355 (1995).
[6] 280 NLRB 670 (1986).
[7] 114 F.3d at 997–998.
[8] 502 U.S. 527 (1992) (*Lechmere*). See discussion in 61 NLRB Ann. Rep. 70–71 (1996).
[9] 97 F.3d 583.
[10] Id. at 587.
[11] Id. at 591.

In the second case, *Dow Jones & Co.*,[12] the Board found that the employer allowed certain employee groups to invite outsiders onto the premises, and itself invited certain nonemployee groups to use its facilities and solicit its employees. When the union, which consisted entirely of employees, attempted to hold meetings on the premises and invite outsiders to speak at those meetings, permission was denied, and the employer announced a policy of denying use of (the employer)'s facilities for noncompany-related business purposes. The Board concluded that the company had discriminatorily denied access to the union, and that its policy announcement constituted an unlawful unilateral change of past practice.[13] The Fourth Circuit enforced without opinion the Board's finding of a violation.[14]

In the third case, *Postal Service*,[15] the Board struck down a Postal Service rule barring employees from engaging in intraunion campaign activities at installations other than where they were employed. Under its rule, the Postal Service had ejected from its premises off-duty employees distributing internal union campaign literature in parking lots or by employee entrances, when the off-duty employees did not work at the installation where they were distributing the literature. The Board determined that the rights of off-duty employees are governed by *Tri-County Medical Center*,[16] not *Lechmere*, and that off-duty employees cannot be denied access to outdoor, nonwork areas absent a showing that the ban is necessary to maintain plant discipline or production. The Board concluded that no such justification had been shown.[17] The Third Circuit enforced without opinion the Board's finding of a violation.[18]

However, in a fourth case, *Be-Lo Stores v. NLRB*,[19] the Fourth Circuit disagreed with a Board finding that the employer violated the Act by discriminatorily applying its no-solicitation policy against union activity. The Board had found that although the employer rigorously enforced that policy against nonemployee union agents engaged in picketing or handbilling, it took a more permissive attitude towards other organizations, whom it allowed into its stores or parking lots to sell items or distribute literature. The court, nonetheless, determined that in the context of the employer's multistore operation, the limited number of tolerated solicitations did not establish antiunion discrimination.[20]

C. Supervisory Status of Nurses

Section 2(11) of the Act provides that an individual is a supervisor, and therefore excluded from the protection of the Act, only if he or

[12] 318 NLRB 574 (1995).
[13] 318 NLRB at 575–577.
[14] *Dow Jones & Co. v. NLRB*, 100 F.3d 950.
[15] 318 NLRB 486 (1995).
[16] 222 NLRB 1089 (1976).
[17] 318 NLRB at 486, 487.
[18] *NLRB v. Postal Service*, 118 F.3d 1577.
[19] 126 F.3d 268.
[20] Id. at 284–285.

she exercises "independent judgment" in performing one or more of the functions enumerated in that section. In *Providence Hospital*,[21] the Board, reconsidering the question of the supervisory status of nurses in light of the Supreme Court's decision in *NLRB v. Health Care & Retirement Corp.*,[22] held that it would follow its "traditional approach" in resolving that question. Under that approach, the Board distinguishes "supervisors who share management's power or have some relationship or identification with management" from "skilled nonsupervisory employees whose direction of other employees reflects their superior training, experience, or skill."[23] In particular, a registered nurse (RN), when assigning or directing other employees, does not exercise "the independent judgment required of a supervisor" if such assignment or direction "does not require any independent judgment beyond the professional judgment exercised by all RNs."[24]

In *Providence Alaska Medical Center v. NLRB*,[25] the Ninth Circuit upheld the Board's findings that, under the foregoing principles, the charge nurses in issue in *Providence* were not supervisors. The court found that, in light of the Supreme Court's decision in *NLRB v. Health Care & Retirement Corp.*, it was clear that the charge nurses acted in the interest of their employer in directing and assigning other employees. However, it noted, the Supreme Court had expressly recognized that the statutory terms "independent judgment" and "responsibly direct" were ambiguous, and the Board's "reasonably defensible" interpretation of these phrases was therefore entitled to deference. Here, the charge nurses' assignment of other RNs to particular patients was "a routine activity that does not require the exercise of independent judgment," because such assignments were made only within the parameters of a work schedule already established by a conceded supervisor. In addition, other RNs, not claimed to be supervisors, sometimes swapped patients or otherwise participated in the assignment process.[26]

In addition, the court found, the scheduling functions that the charge nurses did perform were "more clerical than supervisory." If they concluded that the facility was overstaffed or understaffed, they had to follow a designated procedure, consulting the staff coordinator and then either asking for volunteers or calling from a predetermined roster. Further, their decision to ask other employees to work overtime or leave early was based on a routine evaluation of the amount of work to be done during the current shift. Asking another RN to work overtime also did not involve the exercise of independent judgment because the charge nurse could not order the RN to do so. Similarly, approving other employees' breaks did not require the exercise of independent judgment, because it involved, in part, the routine task

[21] 320 NLRB 717 (1996).
[22] 511 U.S. 571 (1994).
[23] *Providence Hospital*, 320 NLRB at 729.
[24] Id. at 732.
[25] 121 F.3d 548.
[26] 121 F.3d at 551–552.

of ensuring that all RNs did not take their breaks at the same time, and because the charge nurses often relied on the discretion of other RNs to take breaks only at appropriate times.[27]

The court also upheld the Board's finding that the charge nurses' coordination of patient care did not involve the use of independent judgment in the responsible direction of other employees. Many of the charge nurses' functions—evaluating other RNs, intervening in problem situations, and making entries on end-of-shift reports—were also performed by concededly nonsupervisory staff RNs, and the same individual could be a charge nurse on one shift and a staff RN on another. To the extent that charge nurses told staff RNs what to do, they were merely giving routine guidance to less experienced employees; such guidance, based on the charge nurses' superior skills and experience, was not enough to make them supervisors.[28]

Finally, the court observed that the fact that no other on-site supervision was present in some units on some shifts did not require a finding that the charge nurses were supervisors. The court noted especially that a supervisory nurse was on call at all times, and viewed this fact as indicating that the ultimate responsibility rested with the supervisor nurse rather than the charge nurse. Moreover, the court pointed out, most of the employees on duty during these shifts were staff RNs, who were professionals and did not need close supervision; they would carry out the supervisory nurse's orders whether or not she was physically present.[29]

D. Successor Employer's Right to Set New Working Conditions

In *NLRB v. Burns Security Services*,[30] the Supreme Court recognized that in circumstances where a successor employer makes it "perfectly clear" that it plans to retain all of the predecessor's unit employees, the successor must consult with the union that represented those employees before setting initial employment terms different from those of the predecessor. In *Canteen Corp. v. NLRB*,[31] the Seventh Circuit was required to review a Board finding about such circumstances. The court found that the Board was on "solid ground" in determining that the employer had made its intent to hire the predecessor's employees "perfectly clear," and thus was obligated to bargain over initial employment terms, when it (1) personally contacted the predecessor's employees and encouraged them to apply for employment, (2) took no action to interview or hire outside applicants, and (3) initiated several discussions with the union over particular working conditions that it wished to change and scheduled a meeting to negotiate a collective-bargaining agreement.[32]

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[27] Id. at 552–554.
[28] Id. at 554.
[29] Id. at 555.
[30] 406 U.S. 272, 275 (1972).
[31] 103 F.3d 1355.
[32] 103 F.3d at 1362–1363.

The court additionally rejected the employer's argument that, regardless of its earlier statements and conduct, it could not be held to be a "perfectly clear" successor because it had announced new conditions of employment prior to extending formal job offers. In agreeing with the Board's position, and rejecting the view expressed by the Second Circuit in *Nazareth Regional High School v. NLRB*,[33] the court, quoting *Machinists v. NLRB*,[34] emphasized the importance of employer statements, even if made prior to extending formal offers, that tend to engender "expectations, oftentimes critical to employees, that prevailing employment arrangements will be essentially unaltered."[35]

In reaching its conclusions, the court further agreed with the Board that *Spruce Up Corp.*,[36] did not support the employer's argument that it was free to set unilaterally initial employment terms different from those in existence under the predecessor. In *Spruce Up*, the Board had found that the "perfectly clear" caveat did not apply when the employer's statement of its intention to retain the predecessor's employees was accompanied by a statement that it intended to do so under new terms of employment. In *Canteen*, in contrast, the employer first made clear its intent to hire the predecessor's employees, and only later stated that its offers of employment would be conditioned on acceptance of wages significantly lower than those offered by the predecessor.[37]

E. Remedies

Section 10(c) of the Act authorizes the Board to remedy unfair labor practices by issuing orders requiring the wrongdoer "to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of [the Act.]" During the year, three circuits considered the limits of the Board's powers under this section of the Statute.

Twenty-Five years ago, in *Tiidee Products*,[38] the Board concluded for the first time that it would effectuate the policies of the Act to require a charged party to reimburse attorney's fees and other legal expenses incurred by the Board's General Counsel and participating charging parties where the charged party committed egregious violations of the Act and defended that unlawful conduct on frivolous grounds in litigation before the Board. Shortly thereafter, in *Food Store Employees Union Local 347 v. NLRB*[39] and *Electrical Workers (UE) v. NLRB*,[40] the District of Columbia Circuit upheld the Board's authority under Section 10(c) of the Act to award attorney's fees and other legal expenses in such circumstances. More recently, in *Frontier*

[33] 549 F.2d 873 (1977).
[34] 595 F.2d 664, 674-675 (D.C. Cir. 1978), cert. denied 439 U.S. 1070 (1979).
[35] 103 F.3d at 1364.
[36] 209 NLRB 194 (1974), enfd. mem. 529 F.2d 516 (4th Cir. 1975).
[37] 103 F.3d at 1362.
[38] 194 NLRB 1234, 1235-1236 (1972).
[39] 476 F.2d 546, 550-551 (1973).
[40] 502 F.2d 349, 351-355 (1974).

Hotel & Casino,[41] the Board determined that a respondent employer had engaged in "flagrant, aggravated, persistent, and pervasive" surface bargaining with two unions and defended that unlawful conduct on frivolous grounds in litigation before the Board. To remedy the employer's violations, the Board ordered the employer to reimburse the unions for their negotiating expenses and to reimburse the General Counsel and the unions for the expenses that they incurred in litigating the case before the Board.

On review of the *Frontier* case, a divided panel of the District of Columbia Circuit in *Unbelievable, Inc. v. NLRB*,[42] upheld the Board's award of negotiation expenses but concluded, contrary to its earlier precedent, that the Board does not have the authority under Section 10(c) of the Act to award attorney's fees and other legal expenses. In reaching the latter conclusion, the panel majority relied on the "American Rule," discussed in *Alyeska Pipeline Service Co. v. Wilderness Society*,[43] that each party ordinarily must bear its own litigation expenses unless Congress explicitly authorizes fee shifting. In light of the American Rule, the panel majority concluded that Section 10(c) of the Act does not authorize the Board to order reimbursement of litigation expenses because neither the Act nor its legislative history clearly demonstrate that Congress intended to allow the Board to "override the presumption that the American Rule erects against the award of attorney's fees."[44] The panel majority also concluded that the Act does not authorize the award of litigation expenses to charging parties because the General Counsel alone is responsible for prosecuting unfair labor practice cases and, accordingly, charging parties "need not play any role in the proceedings beyond serving the respondent with a copy of the charge."[45] Additionally, the panel majority determined that the award of litigation expenses furthers a punitive rather than a remedial purpose because the primary motivation for such an award is to deter frivolous litigation.[46] The panel majority also concluded that such an award does not directly effectuate the policies of the Act because "it is not in itself an unfair labor practice to present a frivolous defense to an unfair labor practice charge."[47] The panel majority finally concluded that the Board "strays from its area of expertise when it determines whether fee shifting is appropriate in a particular case."[48] The dissenting member of the panel stated that she would continue to adhere to the in-circuit precedent which held that the Board does have the authority under Section 10(c) of the Act to award litigation expenses in the circumstances presented.[49]

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[41] 318 NLRB 857 (1995).
[42] 118 F.3d 795.
[43] 421 U.S. 240 (1975).
[44] 118 F.3d at 801.
[45] Id. at 803.
[46] Id. at 805–806.
[47] Id. at 805.
[48] Id. at 805.
[49] Id. at 807–808.

On the other hand, in *Geske & Sons, Inc. v. NLRB*,[50] the Seventh Circuit, after upholding the Board's determination that an employer committed an unfair labor practice by filing and prosecuting a baseless lawsuit in state court against a union in retaliation for the union's lawful recognitional picketing of the employer's business, held further that the Board acted within its broad remedial discretion in ordering the employer to reimburse the union for the expenses that it incurred in defending the state court suit. The court observed that "[a] baseless and retaliatory lawsuit against a union can be a powerful weapon in the hands of an unprincipled employer."[51] It further stated that "[s]uch an employer need not win its lawsuit against a union to thwart the Union's attempts to organize workers; rather, the employer need only impose substantial costs and delays upon the Union."[52] The court concluded that the Board's reimbursement order effectuated the policies of the Act by compensating the union "for expenses that it would not have incurred in the absence of the baseless state law suit" and by deterring "unlawful attempts by employers to hinder organizational attempts by unions."[53] The court also noted[54] that its holding was consistent with a similar ruling by the District of Columbia Circuit in *Gibson Greetings, Inc. v. NLRB*.[55]

In the third case, *New Breed Leasing Corp. v. NLRB*,[56] the Ninth Circuit upheld the Board's determination that a successor employer violated the Act by refusing to hire its predecessor's employees because of their union affiliation and by refusing to recognize and bargain with the unions that represented those employees. As part of the remedy for those violations, the Board had ordered the employer to reimburse the employees for lost wages, based on pay rates contained in the predecessor's collective-bargaining agreement.[57] Rejecting the employer's contention that the Board improperly required reimbursement at the predecessor's pay rates, the court concluded that reimbursement at such rates is appropriate because the employer failed to demonstrate that it would have lawfully reduced the wages that the predecessor paid had it initially recognized and bargained with the unions.[58] The court determined that that result is consistent with the general remedial principle that any uncertainty should be resolved against the wrongdoer.[59] Accordingly, the court concluded that the Board's "grant of back pay based on the predecessor's Union pay scale" effectuated the policies of the Act by "restor[ing] as nearly as possible the employment situation that would have occurred absent [the employer's] discrimination against the Union employees."[60] A dissenting judge would have held that because the employer was not

[50] 103 F.3d 1366.
[51] *Id.* at 1379.
[52] *Id.*
[53] *Id.*
[54] *Id.* at 1378.
[55] 53 F.3d 385, 394 (D.C. Cir. 1995).
[56] 111 F.3d 1460.
[57] 317 NLRB 1011, 1025–1026 (1995).
[58] 111 F.3d at 1467–1468.
[59] *Id.* at 1468.
[60] *Id.* at 1468–1469.

bound to accept the predecessor's contract, its liability should not be measured by the terms of that contract.[61]

[61] Id. at 1470-1472.

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VIII

Injunction Litigation

A. Injunction Litigation Under Section 10(j)

Section 10(j) of the Act empowers the Board, in its discretion, after issuance of an unfair labor practice complaint against an employer or a labor organization, to petition a U.S. district court for appropriate, temporary injunctive relief or restraining order in aid of the unfair practice proceeding, while the case is pending before the Board.[1] In fiscal year 1997, the Board filed a total of 35 petitions for temporary relief under the discretionary provisions of Section 10(j). All the petitions filed were against employers. Five cases authorized in the prior year were also pending at the beginning of the year. Of these 40 cases, 10 were either settled or adjusted prior to court action. Four cases were withdrawn prior to court decision because of changed circumstances. Injunctions were granted in 14 cases and denied in 7 cases. Five cases remained pending at the end of the fiscal year.

District courts granted injunctions against employers in 14 cases. Among the violations enjoined were employer interference with nascent union organizing campaigns, including cases where the violations precluded a fair election and warranted a remedial bargaining order,[2] improper withdrawal of recognition from incumbent unions, discrimination that threatened to undermine the status of an incumbent union, including refusal to properly reinstate unfair labor practice strikers, and lawsuits against unions and employees which allegedly were filed in retaliation for protected activity under the Act and lacked a reasonable basis in fact and law.

Three cases litigated during this fiscal year involved the interim reinstatement of unfair labor practice strikers. In two cases, *Kobell v. Beverly Health Services*,[3] and *Kobell v. Citizens Publishing & Printing Co.*,[4] district courts found reasonable cause to believe that the employers had engaged in unfair labor practices that caused or prolonged the strike and that the employers refused to reinstate strikers on their unconditional offer to return to work. In both cases, the district courts ordered that the strikers be reinstated to their former positions. In addition, in *Beverly*, the court ordered that the unions' access to bulletin boards at the nursing homes be restored. In the third case,

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[1] See, e.g., *NLRB v. Electro-Voice, Inc.*, 83 F.3d 1559 (7th Cir. 1996), cert. denied mem. 117 S.Ct. 683; and *Rivera-Vega v. Contigas, Inc.*, 70 F.3d 153 (1st Cir. 1995), both discussed in the 1996 Annual Report.

[2] See generally *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

[3] 154 LRRM 2[illegible] (W.D.Pa.), appeal pending Nos. 97-3280 and 97-3357 (3d Cir.).

[4] Civil No. 96-CV-02388 (W.D.Pa.).

Schaub v. Detroit Newspaper Agency,[5] the district court denied the 10(j) petition. Two separate unfair labor practice proceedings were relevant to the allegations of the 10(j) petition. In a decision pending before the Board at the time of the 10(j) litigation, an administrative law judge had determined the strikers were unfair labor practice strikers; the employer's refusal to accord the strikers the reinstatement rights of unfair labor practice strikers after they offered to return was alleged in a second complaint, issued after the administrative law judge decided the first case. The district court declined to find "reasonable cause" to believe the Newspapers had unlawfully refused to reinstate the strikers "without a final adjudication" of the status of the strike. The court further found that interim relief was not just and proper, holding that the Board had not demonstrated erosion of union support by strikers scattering to other permanent employment or by the failure to reinstate impeding bargaining. The Board has appealed this decision.

Lineback v. Printpack, Inc.,[6] decided during the fiscal year, concerned an employer's retaliation, including the filing of a lawsuit, against protected activity.[7] An incumbent union was engaged in a labor dispute with the employer. The union president, an employee of the employer, sent a letter to various employer customers seeking their support in the event that the union struck. Based on these letters, the employer discharged the union president and sued him and the union in Federal court under Section 303 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 187, alleging that the letter was a secondary boycott that violated Section 8(b)(4)(B) of the Act.

The Board's 10(j) petition, filed in the same district court, alleged that the letters were protected concerted activity under the Act and did not constitute an illegal secondary boycott, that the discharge of the union president was unlawful discrimination, and that the Section 303 suit lacked a reasonable basis in law and fact and was filed in retaliation for protected activity, and was thus attackable notwithstanding the Supreme Court's decision in *Bill Johnson's Restaurants v. NLRB*.[8] The Board sought, inter alia, the interim reinstatement of the union president and a temporary stay of the Section 303 lawsuit.

The district court[9] concluded that the Regional Director was likely to succeed on the contention that the letters were protected concerted activity under the Act and not a secondary boycott and that the employer discriminated against the union president by discharging him.[10] The court also concluded[11] that the Regional Director was likely to

[5] 155 LRRM 3040 (E.D.Mich.), appeal pending No. 97-1920 (6th Cir.).

[6] 156 LRRM 2396 (S.D.Ind.), appeal pending No. 97-3646 (7th Cir.).

[7] In response to the 10(j) petition, the employer filed a countersuit against the Board, the General Counsel and the Acting Regional Director. In its decision on the 10(j) petition, the court also dismissed the counterclaim. For further details on the counterclaim see ch. X, infra, "Special Litigation."

[8] 461 U.S. 731 (1983).

[9] The 10(j) matter was assigned to a judge other than the one who had the Sec. 303 case.

[10] 156 LRRM at 2403–2405. The court rejected the employer's claims that the letters so disparaged the employer or were so disloyal as to lose the protection of the Act.

[11] 156 LRRM at 2405–2408.

succeed in proving that the Section 303 lawsuit lacked a reasonable basis in law and fact and was filed in retaliation for protected activity.

Finally, the court balanced the equities and concluded that interim injunctive relief was just and proper. It found interim reinstatement of the union president was necessary to protect the union's status at the facility.[12] The court also concluded that it was appropriate to compel the employer to stay its Section 303 lawsuit. The court found that the maintenance of the suit was deterring the union and its members from engaging in protected activity to seek help from third parties at the critical time of a strike.[13] The court also noted that the Board proceeding and the Section 303 case presented common legal issues. Accordingly, it concluded, it was just and proper, under the doctrine of primary jurisdiction, to compel the employer to stay the Section 303 suit to allow the Board the opportunity to decide issues within its expertise.[14] The court also noted that requiring the employer to stay its suit pending Board adjudication would not impose irreparable harm sufficient to outweigh the harm to the union and its members being caused by the maintenance of the suit.[15]

In *Overstreet v. Thomas Davis Medical Center*,[16] the court ordered an employer, which was challenging the union's certification in an appellate court, to bargain and rescind unilateral changes pending the adjudication of a postcertification unfair labor practice complaint. The respondent health maintenance organization had challenged the certification of a union representing a unit of doctors in a variety of procedures in the representation case. After the union won the election, it made massive unilateral changes in the wages, patient loads, malpractice policies, and other working conditions of the doctors. As a result, many doctors resigned their positions. Because the unilateral change allegations were not encompassed in the earlier "test of certification" case, the Board sought 10(j) relief to rescind the unilateral changes and restore the prior working conditions, to reinstate the doctors, and to require bargaining with the union pending a final Board decision. The district court rejected the employer's effort to relitigate the representation issues and found that the Board had demonstrated a "clear likelihood of success on the merits, thus creating the presumption of irreparable injury" under the Ninth Circuit standards. The court also found that, in any event, the harm to the newly certified unit outweighed any harm to the employer.

An unusual case decided during the year, *Jensen v. Chamtech Services Center*,[17] involved an injunction against dissipation of assets deemed necessary to protect a prior Board order awarding backpay to adjudicated discriminatees. The 10(j) petition was based on a sup-

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[12] 156 LRRM at 2410, relying on *NLRB v. Electro-Voice, Inc.*, 83 F.3d 1559, 1573 (7th Cir. 1996).

It also enjoined the employer from denying the union president access to the facility to process grievances, in order to protect the employees' right to have their grievances handled by their chosen representatives. 156 LRRM at 2413.

[13] 156 LRRM at 2411.

[14] 156 LRRM at 2412–2413.

[15] 156 LRRM at 2413.

[16] Civil No. 97–CV–488–TUC–WDB (D.Ariz.), appeal pending No. 97–16904 (9th Cir.).

[17] 155 LRRM 2058 (C.D.Ca.).

plemental compliance specification alleging that certain persons and entities, not named in the earlier proceedings, were derivatively liable for the monetary liability arising from the previous court-enforced Board orders. The Board advanced several alternative theories of derivative liability, including alter ego, "single employer" and "piercing the corporate veil." Based on evidence that the named respondents had been dissipating their assets in an effort to evade their NLRA monetary liability, the Board sought an injunction protecting assets.[18] The court concluded initially that, although the Board had previously issued a decision and order giving rise to the backpay obligation, the supplemental backpay specification against the derivative respondents, which will give rise to another Board Order, gave the court jurisdiction under Section 10(j) to protect this backpay obligation.[19] The court further concluded that a balancing of the harms justified the issuance of an injunction to prevent the respondents from shifting, depleting, or diverting assets. The court found that the requested injunction would not be unduly burdensome to the respondents. On the other hand, if, in the absence of interim relief, the respondents dissipated their assets, the Board's Order for backpay would be nullified or frustrated. Thus, the court concluded, the potential harm to the employees and the public interest outweighed any harm that the injunction might impose.[20] The court ordered that, unless the respondents funded an escrow account or obtained a surety bond in the amount of the estimated backpay figure of $2,225,000, the respondents were prohibited from dissipating their assets, but allowed to carry on normal business activities and incur bona fide living expenses. The decree also required the respondents to respond to certain information requests by the Board.[21]

Finally, although no noteworthy appellate decisions issued during the fiscal year, one 10(j) contempt case, *Asseo v. Le Rendezvous Restaurant*,[22] is worthy of comment. In the original 10(j) case,[23] the court had ordered a successor corporation, inter alia, to offer employment to predecessor employees, to recognize and bargain with the predecessor union, and to restore the predecessor employer's wages and benefits until the parties had bargained in good faith to an agreement or impasse concerning any changes thereto. Thereafter, the Board filed a civil contempt petition alleging that the respondent corporation and its president and majority shareholder had collectively failed to comply with the 10(j) decree. Specifically, the Board alleged, inter alia, that the respondents had failed to make immediate offers of employment to predecessor employees, restore the predecessor working conditions, post at the facility a copy of the court's opinion and order in Spanish as well as English, and submit an affidavit of compliance to the court.

[18] See, e.g., *Kobell v. Menard Fiberglass Products*, 678 F.Supp. 1155, 1166–1167 (W.D.Pa. 1988).
[19] 155 LRRM at 2059.
[20] 155 LRRM at 2060.
[21] 155 LRRM at 2060–2061.
[22] 951 F.Supp. 307 (D.P.R.).
[23] See *Asseo v. Le Rendezvous Restaurant*, 913 F.Supp. 89 (D.P.R. 1995).

By the time of the hearing on the contempt petition, the facility had been closed, the respondents had terminated all their employees, and the corporate respondent had filed for liquidation under Chapter 7 of the U.S. Bankruptcy Code.

In a written opinion, the court concluded that respondents had admitted their failure to post the court's opinion and order in Spanish, to file an affidavit of compliance, to restore the prior terms and conditions of employment, and to timely hire certain predecessor employees. The court noted that the respondents' defense of financial inability to comply was belatedly raised and in any event could not justify their failure to comply with those provisions of the 10(j) order which had little or no economic impact.[24] The court further rejected their defense of "inability to comply" as not proven.[25] The court thus found the corporate respondent in civil contempt and liable for over $100,000 in compensatory damages, representing the net backpay owed to the employees until the employer's closure. The court also awarded to the Board its costs and expenditures incurred in the investigation and prosecution of the case.

The court further concluded that the corporate officer and majority shareholder were also liable in civil contempt, as they had a duty to bring their corporation into compliance with the 10(j) decree.[26] The court imposed compensatory fines on the two individual contemnors in the amount of $10,000, to compensate the net backpay of the aggrieved employees. The court further concluded that neither the termination of the business nor the Chapter 7 Bankruptcy filing mooted the contempt proceeding or precluded the imposition of sanctions for civil contempt.[27] Finally, the court dealt with fines of $10,000 and $3000 it had imposed on the corporate respondent and individual contemnors, respectively, at the hearing. The court held that, inasmuch as they were intended to secure future compliance, they should have been suspended, effective only on the contemnors' failure to purge themselves of the contempt. As imposed, the fines took on the semblance of unconditional criminal sanctions, not appropriate in a civil contempt proceeding. Accordingly, the court amended its earlier ruling and ordered that the $3000 deposited in court by the individual respondents was to be retained by the court as partial payment of any compensatory damages found due.[28]

B. Injunction Litigation Under Section 10(l)

Section 10(l) imposes a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of Section 8(b)(4)(A), (B), and (C),[29]

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[24] 951 F.Supp. at 311.

[25] 951 F.Supp. at 312.

[26] 951 F.Supp. at 313, citing, inter alia, *NLRB v. Maine Caterers, Inc.*, 732 F.2d 689, 691 (1st Cir. 1984).

[27] 951 F.Supp. at 313.

[28] 951 F.Supp. at 314.

[29] Sec. 8(b)(4)(A), (B), and (C), as enacted by the Labor Management Relations Act of 1947, prohibited certain types of secondary strikes and boycotts, strikes to compel employers or self-employed persons to join

Continued

or Section 8(b)(7),[30] and against an employer or union charged with a violation of Section 8(e),[31] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue." In cases arising under Section 8(b)(7), however, a district court injunction may not be sought if a charge under Section 8(a)(2) of the Act has been filed alleging that the employer had dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provisions shall be applicable, "where such relief is appropriate," to threats or other coercive conduct in support of jurisdictional disputes under Section 8(b)(4)(D) of the Act.[32] In addition, under Section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such ex parte relief, however, may not extend beyond 5 days.

In this report period, the Board filed 17 petitions for injunctions under Section 10(l). Of the total caseload, comprised of this number together with eight cases pending at the beginning of the period, eight cases were settled, one was dismissed, four continued in an inactive status, one was withdrawn, and seven were pending court action at the close of the report year. During this period, four petitions went to final order, the courts granting injunctions in four cases and denying none. Injunctions were issued in one case involving secondary boycott action proscribed by Section 8(b)(4)(B). Injunctions were granted in one case involving jurisdictional disputes in violation of Section 8(b)(4)(D). Injunctions were also issued in two cases to proscribe alleged recognitional or organizational picketing in violations of Section 8(b)(7).

Of the cases settled, five involved secondary boycotts under the proscriptions of Section 8(b)(4)(B). One involved jurisdictional disputes under Section 8(b)(4)(D); one involved recognitional or organizational picketing under Section 8(b)(7); and one involved a combination of Section 8(b)(4)(B) and (D).

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labor or employer organizations, and strikes against Board certifications of bargaining representatives. These provisions were enlarged by the 1959 amendments of the Act (Title VII of Labor Management-Reporting and Disclosure Act) to prohibit not only strikes and the inducement of work stoppages for these objects but also to proscribe threats, coercion, and restraint addressed to employers for these objects, and to prohibit conduct of this nature where an object was to compel an employer to enter into a hot cargo agreement declared unlawful in another section of the Act, Sec. 8(e).

[30] Sec. 8(b)(7), incorporated in the Act by the 1959 amendments, makes organizational or recognitional picketing under certain circumstances an unfair labor practice.

[31] Sec. 8(e), also incorporated in the Act by the 1959 amendments, makes hot cargo agreements unlawful and unenforceable, with certain exceptions for the construction and garment industries.

[32] Sec. 8(b)(4)(D) was enacted as part of the Labor Management Relations Act of 1947.

IX

Contempt Litigation

In fiscal year 1997, 210 cases were referred to the Contempt Litigation and Compliance Branch (CLCB or the Branch) for advice, or for consideration for contempt or other appropriate action to achieve compliance with court decrees, compared to 144 cases in fiscal year 1996. Voluntary compliance was achieved in 22 cases during the fiscal year, without the necessity of filing a contempt petition, while in 49 others, it was determined that contempt was not warranted.

During the same period, 16 civil contempt or equivalent proceedings were instituted as compared to 15 such proceedings in fiscal year 1996. These included two motions for the assessment of fines and/or writs of body attachment. In addition, the Branch initiated and successfully concluded, or assisted the Regions in various ancillary proceedings during the year, including a motion to avoid fraudulent transfers, several adversary nondischargeability actions in bankruptcy, various garnishment actions under the Federal Debt Collection Procedures Act (FDCPA), and an action to disallow a debtor's sale of property during bankruptcy proceedings. Thirteen civil contempt or equivalent adjudications and one criminal contempt adjudication were awarded in favor of the Board. In addition, the Branch handled three enforcement cases from the Appellate Court Branch, and obtained judicial orders enforcing the Board's Order in each case.

During the fiscal year, the CLCB collected $82,074 in fines and $1,719,062 in backpay, while recouping $38,726 in court costs and attorneys' fees incurred in contempt litigation.

A number of proceedings during the fiscal year were noteworthy. In *U.S. v. Waldon Mirror & Blinds*,[1] the CLCB and the U.S. Attorney's office for the Eastern District of New York jointly instituted felony criminal contempt proceedings against the company and two of its corporate principals for intentionally violating the affirmative provisions of a November 15, 1994 order of the United States Court of Appeals for the Second Circuit. The defendants' contempt of court included failing to offer reinstatement to employees, recognize and bargain with Local 206, Glass Warehouse Workers, honor the collective-bargaining agreement with Local 206, and mail copies of the Board's notice. After being indicted by Federal grand jury on December 5, 1996, all parties pled guilty on April 10, 1997, and were thereafter sentenced by U.S. District Court Chief Judge Jack Weinstein.

[1] 96 CR 1088 (JBW) (E.D.N.Y.).

During the course of this proceeding the CLCB, for the first time, utilized the services of a forensic accountant to examine the company's books for the purpose of determining the company's financial condition, and to ascertain whether there was sufficient evidence of siphoning of corporate assets to pierce the corporate veil and hold corporate officials personally liable to pay the backpay debts owed.

The CLCB also used the leverage of a contempt proceeding in the Fourth Circuit to facilitate a highly significant nationwide agreement between the Postal Service and the American Postal Workers Union (APWU),[2] which establishes an alternative dispute resolution procedure for resolving disputes over what information the Postal Service is required to share with the union. In the past, many of such information disputes between the Postal Service and APWU led to the filing of unfair labor practice charges with the Regions. The agreement establishes an expedited system for the parties' local, district, area, and national representatives to discuss information request disputes, with an emphasis on resolving the disputes at the lowest possible level. It also requires the parties to exhaust the dispute resolution process before filing an unfair labor practice charge. Finally, any unfair labor practice allegations that remain after exhaustion of the agreement process will be filed with the Board's General Counsel's office in Washington, D.C., with further efforts at settlement made by the CLCB. Only if these efforts fail will the case be returned to the Regions for normal processing. The General Counsel estimates that this agreement could lead to as many as 1000 fewer charges being filed with the Board each year.

The CLCB also became involved in a number of high profile cases involving unlawful picketing by labor organizations. In both *NLRB v. Teamsters Local 372 (Detroit Newspapers)*[3] and *NLRB v. Carpenters Local 174*,[4] for example, the named labor organizations allegedly engaged in substantial picket line violence in support of labor disputes. The CLCB intervened and negotiated settlements in both cases that provided for issuance of consent orders and provisions requiring the unions to take various steps to maintain control over all picketing activity. Reports of unlawful activity either diminished dramatically or disappeared entirely after the entry of these orders.

Finally, the CLCB became actively involved in a number of important collection cases, as shown by the more than $1.7 million in backpay collected through its efforts. Several cases are worthy of mention. In *Chamtech*,[5] a very complicated alter ego case involving fraudulent conveyances and potential backpay in excess of $3 million, the CLCB assisted the Region in obtaining a 10(j) injunction freezing certain assets and is involved on a continuing basis in an effort to recover assets that respondents have attempted to secrete and/or fraudulently convey. In *Potential School (Ramona Fogerty)*,[6] the CLCB obtained

[2] No. 92-2358 (4th Cir.).
[3] No. 96-6033 (6th Cir.).
[4] No. 95-2020 (7th Cir.).
[5] 155 LRRM 2058 (C.D.Ca.).
[6] 153 LRRM 3038, 264 B.R. 956 (Bankr.N.D.Ill.).

the first ruling by a bankruptcy court that backpay resulting from discriminatory actions is nondischargeable under Section 523(a)(6) of the Bankruptcy Code, allowing the Board to collect 100 percent of the backpay owed to discriminatees in a case dating from 1982. In *NLRB v. Total Property Services*,[7] the CLCB recovered almost 100 percent of the $50,000 owed in backpay directly from the respondent's bank because the bank inadvertently allowed this sum of money to pass through the respondent's account after the CLCB had served the bank with a writ of garnishment. And in *NLRB v. Fox Painting Co.*,[8] the CLCB brought a 7-year litigation struggle to its conclusion when respondent finally agreed to pay $120,000 in backpay to resolve the dispute.

[7] No. 96-12349 (Bankr.D.R.I.).
[8] Nos. 89-6317/6509 (6th Cir.).

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Special Litigation

The Board participates in a number of cases which fall outside the normal process of statutory enforcement and review. The following represents the most significant of these cases litigated this year.

A. Litigation Concerning the Board's Representation Case Jurisdiction

In *Perdue Farms, Inc. v. NLRB*,[1] the Fourth Circuit vacated a district court preliminary injunction which had halted a Board representation proceeding. The district court had declared the election stayed until such time as the district court might conclude that the Board had complied with the mandate of 29 U.S.C. §159(c)(1) by investigating allegations that the petitioning union had forged signatures on authorization cards. The Fourth Circuit ruled that it would be inconsistent with *Leedom v. Kyne*,[2] for the district court to address Perdue's claim and enjoin the Board before the Board had conducted its review of the forgery allegations. The Fourth Circuit deemed the injunction "improvidently granted, as it serves to inhibit the very Board proceedings that may render judicial involvement unnecessary."

In *Laidlaw Waste Systems v. NLRB*,[3] Laidlaw unsuccessfully sought district court review of the Board's application of its "*North Macon*" rule.[4] This rule requires that election eligibility lists contain the full first and last name and address of each employee. In late 1995, after approval of a stipulated election agreement, the Board's Acting Regional Director ordered Laidlaw to provide an eligibility list, citing the *North Macon* rule. Laidlaw submitted its list containing only the first letter of the employees' first names, along with the other required information. After losing the election, the Union challenged the conduct of the election on various grounds including the *North Macon* rule. The Board decided that a new election should be ordered based on Laidlaw's failure to provide the full first name of its employees on the eligibility list. Laidlaw then filed suit in district court, claiming that this application of the *North Macon* rule was a departure from prior Board practice and, as such, was required to have been promulgated in accordance with rulemaking procedures in

[1] 108 F.3d 519 (4th Cir.).
[2] 358 U.S. 184 (1958).
[3] Civil No. 4:96-CV-566-E (N.D.Tex. Ft. Worth Div.)
[4] *North Macon Health Care Facility*, 315 NLRB 359 (1994).

the Administrative Procedures Act. The district court granted the Board's motion to dismiss for lack of subject matter jurisdiction. The court applied the settled rule that under *Leedom v. Kyne*, supra, a clear violation of a mandatory provision of the Act is a prerequisite for district court jurisdiction over an action challenging a Board representation decision. The Court held that even if this was a departure from the Board's previous application of the *North Macon* rule, it is within the Board's discretion to decide the issue, or to enact a general rule through adjudication rather than rulemaking.

In another case,[5] a district court again granted a Board motion to dismiss a company's complaint for direct review of a Board representation proceeding. In this case, McKesson Corp. sought to enjoin the Board and the Regional Director for Region 19 from giving effect to an order denying reinstatement of an employee's decertification petition. According to McKesson, the Board failed to conduct a "fair and proper" investigation of the decertification petition in violation of Section 9(c)(1) of the Act, the Board's Casehandling Manual, and Board precedent. The district court applied the test for subject matter jurisdiction set forth in *Leedom*, and held that McKesson had failed to identify a specific statutory provision which the Regional Director had violated by dismissing and refusing to reinstate the decertification petition. The court further noted that any alleged departure from the Casehandling Manual or Board precedent does not rise to the level of a violation of a specific statutory mandate. The court also explained that jurisdiction under *Leedom* for direct review of an election proceeding could not be established merely by showing that there existed no alternative means of securing judicial review. The court found that, contrary to McKesson's assertion, nothing in the Act required the Board to grant a hearing before dismissing the decertification petition. Thus, because McKesson also failed to make a showing that the Board had deprived it of due process, subject matter jurisdiction was precluded.

B. Litigation Involving the General Counsel's Prosecutorial Discretion and the Board's Unfair Labor Practice Jurisdiction

In *Beverly Health Services v. Feinstein*,[6] the District of Columbia Circuit affirmed a district court order dismissing an action against the General Counsel for an alleged breach of a written agreement between Beverly and the General Counsel. The agreement concerned certain procedures for handling unfair labor practices charges against Beverly, including the General Counsel's ability to make "single employer" allegations and to seek a nationwide remedy. Beverly filed the action in district court alleging that a particular unfair labor practice complaint had breached the agreement. In affirming the district court's dismissal, the District of Columbia Circuit reasoned that "the

[5] *McKesson Corp. v. NLRB*, 154 LRRM 2187 (W.D.Wash.).
[6] 103 F.3d 151 (D.C. Cir.), cert. denied 156 LRRM 2544.

NLRA insulates the General Counsel from judicial review of his prosecutorial functions." The Court rejected Beverly's argument that it was not seeking review of a prosecutorial decision, concluding that "[a] charging determination of the type challenged here is a quintessential example of a prosecutorial decision." The Court further rejected Beverly's argument that the written agreement eviscerated the jurisdictional limitation against judicial review. "[W]e conclude that the NLRA's protection of prosecutorial decisions is a direct manifestation of Congress' intent to prevent courts from interfering with the General Counsel's exercise of his statutory powers." Finally, the Court noted that the General Counsel's prosecution will be reviewable "through the ordinary administrative review scheme. . . . Beverly will, if necessary, have its day in court on the charging issue, but not today."

In *Zipp v. Geske & Sons, Inc.*,[7] the Seventh Circuit affirmed a district court's dismissal of Geske's attempt to enjoin an unfair labor practice proceeding by way of counterclaims asserted in a 10(j) proceeding. In the underlying unfair labor practice proceeding, the General Counsel alleged that Geske violated the Act by filing and prosecuting a baseless and retaliatory state court lawsuit alleging that union picket signs were libelous. In response to the Board's petition for 10(j) relief in the United States District Court, Geske filed counterclaims alleging that the Board interfered with its First Amendment right to petition the state courts; that the Board violated Section 3(d) of the Act by unlawfully delegating to the General Counsel the authority effectively to preempt state litigation through prosecution of a ULP complaint; and that an amended charge against Geske was "filed" or solicited by the Regional Office in violation of Section 10(b). The Seventh Circuit noted that "[i]t is well settled that a district court has no jurisdiction to enjoin unfair labor practice hearings before the NLRB." The court found that neither the "narrow 'statutory exception'" contained in *Leedom v. Kyne*,[8] nor the exception for a "plain violation" of a constitutional right gave the district court jurisdiction over the counterclaim alleging interference with Geske's First Amendment right to petition the state courts. Under *Bill Johnson's Restaurants v. NLRB*,[9] "the court explained, the Board clearly has the statutory authority to enjoin a baseless state lawsuit as an unfair labor practice," and such a baseless lawsuit enjoys no First Amendment protection. The court further found that neither of the remaining two counterclaims alleged either a plain constitutional violation, or the violation of a plain and unambiguous statutory command or prohibition. Rather, both counterclaims required for their resolution the interpretation of various provisions of the Act. Accordingly, the court found that Geske must raise its arguments before the Board and a court of appeals on review of the Board's final order.

[7] 103 F.3d 1379 (7th Cir.).
[8] 358 U.S. 184 (1958).
[9] 461 U.S. 731 (1983).

In a very similar case, *Lineback v. Printpack, Inc.*,[10] the District Court for the Southern District of Indiana rejected an employer's attempt to enjoin an unfair labor practice proceeding by way of counterclaims asserted against the Board in a 10(j) action. In the underlying unfair labor practice proceeding, the General Counsel alleged that Printpack violated Section 8(a)(1) by firing a union president and suing the president and union in district court under Section 303 of the Labor Management Relations Act, 29 U.S.C. §187. Printpack's counterclaims alleged that (a) the Board proceeding violated Printpack's rights to bring suit under Section 303 and its First Amendment right to petition the courts for relief; (b) the Board violated the Act by further charging that Printpack unlawfully stopped deducting and collecting dues after expiration of the collective-bargaining agreement; and (c) the procedure by which the General Counsel obtained authorization from the Board to proceed under Section 10(j) violates constitutional due process and Administrative Procedure Act prohibitions on substantive ex parte communications between an administrative adjudicator and a party to the proceeding. The district court found inapplicable the *Leedom v. Kyne* exception to the general rule prohibiting courts from enjoining Board proceedings. Relying on *Zipp v. Geske & Sons*,[11] the court noted that the exception is applicable only in situations that involve "crystal clear violations of a statute or the Constitution, and where no adequate alternative remedy is available." In light of the court's separate conclusion that 10(j) relief was warranted in the case, the court found that the Board's ULP and 10(j) proceedings did not amount to actions in plain violation of any statute or constitutional provision. Further, the court found that Printpack could obtain review of any Board action in the underlying proceeding in a court of appeals, and could appeal the district court's 10(j) decision as well. The court further found that the *Leedom v. Kyne* exception was inapplicable to Printpack's claim regarding dues collection. Although there was some authority contrary to the General Counsel's position on the issue, the court found that the General Counsel's position was not "plainly wrong," and that Printpack had adequate review available of a final Board Order. As to the claim based on the ex parte contact in the 10(j) proceeding, the court found that Printpack raised a substantial question, but that it had an adequate avenue of review before the Board and before a court of appeals upon review of a final Board Order.

C. Litigation Under the Equal Access to Justice Act

In *Blaylock Electric v. NLRB*,[12] the Ninth Circuit affirmed the Board's denial of an application for attorney's fees under the Equal Access to Justice Act. In the underlying case, the employer filed an application for fees, alleging that the General Counsel was not substantially justified in issuing complaint, in proceeding through a hear-

[10] 156 LRRM 2396 (D.C.S.D. Ind.)
[11] 103 F.3d 1379 (7th Cir.).
[12] 121 F.3d 1230 (9th Cir.), affg. 319 NLRB 928 (1995).

ing, and in delaying withdrawal of the complaint until 34 days after the administrative evidentiary hearing closed. The Ninth Circuit rejected each of these contentions. The court concluded that the precomplaint affirmative evidence was sufficient to establish a prima facie case, and that the General Counsel did not have a responsibility to subpoena from the employer or seek from third parties exculpatory evidence which the employer itself failed to offer in response to the General Counsel's request for information. The court also agreed that the General Counsel was substantially justified in proceeding through trial because much of the employer's exculpatory testimony was presented toward the end of the hearing, and because material credibility issues remained when the hearing closed. Finally, the court found that substantial evidence supported the Board's finding that the General Counsel's posttrial delay in dismissing the complaint was reasonable.

In *Hess Mechanical Corp. v. NLRB*,[13] the Fourth Circuit set aside the Board's denial of EAJA fees. The Board had concluded that the General Counsel was substantially justified in prosecuting an unlawful discharge case through issuance of an administrative law judge's adverse decision because disposition of the charges required resolution of credibility issues. The Fourth Circuit disagreed that the credibility dispute in this case justified the General Counsel's decision to issue and prosecute the complaint. The court noted that the General Counsel proceeded only on the discharged employee's uncorroborated affidavit, which the administrative law judge could not reasonably have credited in the face of the substantial contrary evidence. The court also held that the General Counsel should not have issued complaint without further investigation because, even if the discharged employee's testimony were credited, all relevant evidence in the General Counsel's possession indicated that the respondent had a valid *Wright Line* defense.[14]

In *Inter-Neighborhood Housing Corp. v. NLRB*,[15] the Second Circuit set aside the Board's order reversing an administrative law judge's award of EAJA fees. The court rejected the Board's reliance on the fact that the case turned on credibility. The court stated that the General Counsel has a responsibility to conduct a reasonable investigation to attempt to resolve credibility issues before issuing complaint. It held that, in light of substantial evidence contradicting the uncorroborated statements on which the General Counsel relied, it was unreasonable to issue complaint without further investigation. The court also faulted the General Counsel for failing, prior to issuing complaint, to inform the Respondent that it was proceeding on a theory different than that alleged in the charge, because the omission deprived the Respondent of the opportunity to offer the additional rebuttal evidence which it presented at trial. Finally, the court took issue with the Board's reliance on the fact that the General Counsel, in deciding whether to issue complaint, had to weigh the charging party's

[13] 112 F.3d 146 (4th Cir.), revg. 320 NLRB 1014 (1996).
[14] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).
[15] 124 F.3d 115 (2d Cir.), revg. 321 NLRB 419 (1996).

sworn statements against the Respondent's unsworn statement. According to the court, the unsworn nature of Respondent's statement did not justify reversal of the administrative law judge's award of fees where the statement was corroborated and there was no evidence rendering it suspect.

D. Litigation to Enforce Board Subpoenas

In *NLRB v. North Bay Plumbing, Inc.*,[16] the Ninth Circuit affirmed a district court order enforcing several precomplaint investigative subpoenas. The Board had issued subpoenas after an unfair labor practice charge was filed alleging that North Bay unlawfully refused to interview and hire job applicants because of their union affiliation. The Board subpoenas sought evidence regarding names, addresses, and telephone numbers of job applicants who were interviewed and hired by North Bay, plus information regarding North Bay's hiring policies. The subpoenas also required the appearance and testimony of three North Bay officers. The Ninth Circuit found that the language of the NLRA clearly granted the Board the broad authority to issue subpoenas requiring both the production of evidence and testimony during the investigatory stage of an unfair labor practice proceeding. Further, the court concluded that the evidence sought by the Board was relevant and material to the investigation, and that the subpoenas had to be enforced unless North Bay could prove that the inquiry was unduly burdensome or overly broad. The court also found that the Federal Privacy Act was not available as a defense against subpoena enforcement. Nor was any state court privilege relevant. Lastly, the court rejected North Bay's due process arguments, finding that the Board's statutory mechanism for appealing the issuance of subpoenas—a petition for revocation, to which North Bay availed itself—satisfied procedural due process.

E. Litigation Concerning NLRA Preemption

In *Beverly Enterprises v. Service Employees District 1199P*,[17] Beverly sought to enjoin a strike, asserting that the union violated Section 8(g) of the Act when it failed to give timely and proper advanced notice to the health care institution of the decision to postpone a previously announced commencement date of the strike. The Board intervened and moved to dismiss the action on the ground that it is preempted because the Section 8(g) issue may only be adjudicated by the Board in an unfair labor practice case. The court agreed with the Board and dismissed the case. The court noted that under *San Diego Bldg. Trades Council v. Garmon*,[18] actions which are arguably subject to Section 8 of the NLRA are exclusively under the jurisdiction of the Board. That principle controls in this case, the court concluded, "since the instant controversy is about whether the defendants gave

[16] 102 F.3d 1005 (9th Cir.).
[17] No. 96-64J (unpublished), appeal pend. (No. 97-3094)(3d Cir.).
[18] 359 U.S. 236 (1959).

timely and proper notice, under Section 8(g) of the Act, of the changed commencement of their impending strike. . . . The nature of this controversy and the fact that the defendants' conduct is either protected or prohibited under the Act mandates deference to the Board and establishes the applicability of preemption."

In *Moreno Roofing Co. v. Nagle*,[19] Moreno sought preemption of a state law requiring employers to repay state unemployment benefits when an employee has received a backpay award reduced by interim earnings computed to include unemployment benefits after distribution. The Ninth Circuit affirmed the district court's holding that the state's effort to recoup benefits was sufficiently independent of the Board's authority to avoid preemption under *Garmon*. The Ninth Circuit found that the state law provision at issue was distinguishable from *NLRB v. Illinois Department of Employment Security*.[20] In *Illinois*,[21] the state law requiring an employer to issue backpay checks jointly to the employees and the state was found preempted. The Ninth Circuit held that, in contrast to the *Illinois* case, the California law did not interfere with the Board's backpay remedy because California's collection took place *after* calculation and distribution of the backpay. The court concluded that the state's examination of Board backpay awards, to determine whether an award or settlement includes or excludes unemployment benefits, does not raise preemption concerns because such minor scrutiny is "merely peripheral" to the Board's authority.

F. Miscellaneous

In *Northwest Ohio District Council of Carpenters v. Decorative Floors*, Inc.,[22] the District Court for the Northern District of Ohio denied the defendant employer's motion to join the NLRB as an involuntary party plaintiff under Rule 19(a) of the Federal Rules of Civil Procedure. The plaintiff union had brought the suit to enforce a December 1994 agreement in which the defendant employer promised to make installment payments to the union's benefit funds pursuant to obligations arising under a September 1994 Board Order. The Board had never approved that agreement, but had determined not to pursue enforcement proceedings as long as payments were remitted. The union alleged that the employer had defaulted on the agreement, and that the agreement should be enforced. The defendant argued that joinder of the NLRB was needed for just adjudication of the case because the NLRB had an interest in the agreement which constituted a settlement of the Board's Order. In denying the defendant's joinder motion, the district court reasoned that joinder of the NLRB would deprive the court of subject matter jurisdiction because under Federal law, only a Federal court of appeals has jurisdiction over the enforcement of Board Orders. The court specifically rejected the defendant's

[19] 99 F.3d 340 (9th Cir.).
[20] 988 F.2d 735 (7th Cir. 1993).
[21] 988 F.2d at 737.
[22] No. 3:96-CV-7215 (N.D. Ohio) (WD) (mem.).

argument that the Board's interest in this matter related to the Board's authority to approve compliance agreements involving Board Orders. The court concluded that "[t]he only practical import of the NLRB's approval of or failure to approve a compliance agreement is that decision's effect on [the Board's] enforcement actions. . . . Since the NLRB's sole interest in the action at bar is in enforcing its September 30, 1994 Order, this Court lacks jurisdiction over the claim, and joinder of the NLRB is improper."

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APPENDIX

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

The definitions of terms contained in this glossary are not intended for general application but are specifically directed toward increasing comprehension of the statistical tables that follow. Thus the definitions are keyed directly to the terms used in such tables.

Adjusted Cases

Cases are closed as "adjusted" when an informal settlement agreement is executed and compliance with its terms is secured. (See "Informal Agreement," this glossary.) In some instances, a written agreement is not secured but appropriate remedial action is taken so as to render further proceeding unnecessary. A central element in an "adjusted" case is the agreement of the parties to settle differences without recourse to litigation.

Advisory Opinion Cases

See "Other Cases—AO" under "Types of Cases."

Agreement of Parties

See "Informal Agreement" and "Formal Agreement," this glossary. The term "agreement" includes both types.

Amendment of Certification Cases

See "Other Cases—AC" under "Types of Cases."

Backpay

Amounts of money paid or to be paid employees as reimbursement for wages lost because they were discriminatorily discharged or unlawfully denied employment, plus interest on such money. Also included is payment for bonuses, vacations, other fringe benefits, etc., lost because of the discriminatory acts, as well as interest thereon. All moneys noted in table 4 have been reported as paid or owing in cases closed during the fiscal year. (Installment payments may protract some payments beyond this year and some payments may have actually been made at times considerably in advance of the date a case was closed; i.e., in a prior fiscal year.)

Backpay Hearing

A supplementary hearing to receive evidence and testimony as to the amount of backpay due discriminatees under a prior Board or court decree.

Backpay Specification

The formal document, a "pleading," which is served on the parties when the Regional Director and the respondent are unable to agree as to the amounts of backpay due discriminatees pursuant to a Board order or court decree requiring payment of such backpay. It sets forth in detail the amount held by the Regional Director to be owing each discriminatee and the method of computation employed. The specification is accompanied by a notice of hearing setting a date for a backpay hearing.

Case

A "case" is the general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case. See "Types of Cases."

Certification

A certification of the results of an election is issued by the Regional Director or the Board. If a union has been designated as the exclusive bargaining representative by a majority of the employees, a certification of representative is issued. If no union has received a majority vote, a certification of results of election is issued.

Challenges

The parties to an NLRB election are entitled to challenge any voter. At the election site, the challenged ballots are segregated and not counted when other ballots are tallied. Most frequently, the tally of unchallenged ballots determines the election and the challenged ballots are insufficient in number to affect the results of the election. The challenges in such a case are never resolved, and the certification is based on the tally of (unchallenged) ballots.

When challenged ballots are determinative of the result, a determination as to whether or not they are to be counted rests with the Regional Director in the first instance, subject to possible appeal to the Board. Often, however, the "determinative" challenges are resolved informally by the parties by mutual agreement. No record is kept of nondeterminative challenges or determinative challenges which are resolved by agreement prior to issuance of the first tally of ballots.

Charge

A document filed by an employee, an employer, a union, or an individual alleging that an unfair labor practice has been committed. See "C Case" under "Types of Cases."

Complaint

The document which initiates "formal" proceedings in an unfair labor practice case. It is issued by the Regional Director when he or she concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and adjustment or settlement has not been achieved by the parties. The complaint sets forth all allegations and information necessary to bring a case to hearing before an administrative law judge pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of hearing.

Election, Runoff

An election conducted by the Regional Director after an initial election, having three or more choices on the ballot, has turned out to be inconclusive (none of the choices receiving a majority of the valid votes cast). The Regional Director conducts the runoff election between the choices on the original ballot which received the highest and the next highest number of votes.

Election, Stipulated

An election held by the Regional Director pursuant to an agreement signed by all the parties concerned. The agreement provides for the waiving of hearing and the establishment of the appropriate unit by mutual consent. Postelection rulings are made by the Board.

Eligible Voters

Employees within an appropriate bargaining unit who were employed as of a fixed date prior to an election, or are otherwise qualified to vote under the Board's eligibility rules.

Fees, Dues, and Fines

The collection by a union or an employer of dues, fines, and referral fees from employees may be found to be an unfair labor practice under Section 8(b)(1)(A) or (2) or 8(a)(1) and (2) or (3), where, for instance such moneys were collected pursuant to an illegal hiring hall arrangement, or an invalid or unlawfully applied union-security agreement; where dues were deducted from employees' pay without their authorization; or, in the cases of fines, where such fines restrained or coerced employees in the exercise of their rights. The remedy for such unfair labor practices usually requires the reimbursement of such moneys to the employees.

Fines

See "Fees, Dues, and Fines."

Formal Action

Formal actions may be documents issued or proceedings conducted when the voluntary agreement of all parties regarding the disposition of all issues in a case cannot be obtained, and where dismissal of the charge or petition is not warranted. Formal actions, are, further, those in which the decision-making authority of the Board (the Regional Director in representation cases), as provided in Sections 9 and 10 of the Act, must be exercised in order to achieve the disposition of a case or the resolution of any issue raised in a case. Thus, formal action takes place when a Board decision and consent order is issued pursuant to a stipulation, even though the stipulation constitutes a voluntary agreement.

Formal Agreement (in unfair labor practice cases)

A written agreement between the Board and the other parties to a case in which hearing is waived and the specific terms of a Board order agreed upon. The agreement may also provide for the entry of a consent court decree enforcing the Board order.

Compliance

The carrying out of remedial action as agreed upon by the parties in writing (see "Formal Agreement," "Informal Agreement"); as recommended by the administrative law judge in the decision; as ordered by the Board in its decision and order; or decreed by the court.

Dismissed Cases

Cases may be dismissed at any stage. They are dismissed informally when, following investigation, the Regional Director concludes that there has been no violation of the law, that there is insufficient evidence to support further action, or for a variety of other reasons. Before the charge is dismissed, however, the charging party is given the opportunity to withdraw the charge by the administrative law judge, by the Board, or by the courts through their refusal to enforce orders of the Board.

Dues

See "Fees, Dues, and Fines."

Election, Consent

An election conducted by the Regional Director pursuant to an agreement signed by all parties concerned. The agreement provides for the waiving of a hearing, the establishment of the appropriate unit by mutual consent, and the final determination of all postelection issues by the Regional Director.

Election, Directed

Board-Directed

An election conducted by the Regional Director pursuant to a decision and direction of election by the Board. Postelection rulings are made by the Regional Director or by the Board.

Regional Director-Directed

An election conducted by the Regional Director pursuant to a decision and direction of election issued by the Regional Director after a hearing. Postelection rulings are made by the Regional Director or by the Board.

Election, Expedited

An election conducted by the Regional Director pursuant to a petition filed within 30 days of the commencement of picketing in a situation in which a meritorious 8(b)(7)(C) charge has been filed. The election is conducted under priority conditions and without a hearing unless the Regional Director believes the proceeding raises questions which cannot be decided without a hearing.

Postelection rulings on objections and/or challenges are made by the Regional Director and are final and binding unless the Board grants an appeal on application by one of the parties.

Election, Rerun

An election held after an initial election has been set aside either by the Regional Director or by the Board.

Informal Agreement (in unfair labor practice cases)

A written agreement entered into between the party charged with committing an unfair labor practice, the Regional Director, and (in most cases) the charging party requiring the charged party to take certain specific remedial action as a basis for the closing of the case. Cases closed in this manner are included in "adjusted" cases.

Injunction Petitions

Petitions filed by the Board with respective U.S. district courts for injunctive relief under Section 10(j) or Section 10(z) of the Act pending hearing and adjudication of unfair labor practice charges before the Board. Also, petitions filed with the U.S. court of appeals under Section 10(e) of the Act.

Jurisdictional Disputes

Controversies between unions or groupings of employees as to which employees will perform specific work. Cases involving jurisdictional disputes are received by the Board through the filing of charges alleging a violation of Section 8(b)(4)(D). They are initially processed under Section 10(k) of the Act which is concerned with the determination of the jurisdictional dispute itself rather than with a finding as to whether an unfair labor practice has been committed. Therefore, the failure of a party to comply with the Board's determination of dispute is the basis for the issuance of an unfair labor practice complaint and the processing of the case through usual unfair labor practice procedures.

Objections

Any party to an election may file objections alleging that either the conduct of the election or the conduct of a party to the election failed to meet the Board's standards. An election will be set aside if eligible employee-voters have not been given an adequate opportunity to cast their ballots, in secrecy and without hindrance from fear or other interference with the expression of their free choice.

Petition

See "Representation Cases." Also see "Other Cases—AC, UC, and UD" under "Types of Cases."

Proceeding

One or more cases included in a single litigated action. A "proceeding" may be a combination of C and R cases consolidated for the purpose of hearing.

Representation Cases

This term applies to cases bearing the alphabetical designations RC, RM, or RD. (See "R Cases" under "Types of Cases," this glossary, for specific definitions of these terms.) All three types of cases are included in the term "representation" which deals generally with the problem of which union, if any, shall represent employees in negotiations with their employer. The cases are intitated by the filing of a petition by a union, an employer, or a group of employees.

Representation Election

An election by secret ballot conducted by the Board among the employees in an appropriate collective-bargaining unit to determine whether the employees wish to be represented by a particular labor organization for purposes of collective bargaining. The tables herein reflect only final elections which result in the issuance of a certification of representative if a union is chosen, or a certification of results if the majority has voted for "no union."

Situation

One or more unfair labor practice cases involving the same factual situation. These cases are processed as a single unit of work. A situation may include one or more CA cases, a combination of CA and CB cases, or combination of other types of C cases. It does not include representation cases.

Types of Cases

General:

Letter designations are given to all cases depending upon the subsection of the Act allegedly violated or otherwise describing the general nature of each case. Each of the letter designations appearing below is descriptive of the case it is associated with.

C Cases (unfair labor practice cases)

A case number which contains the first letter designation C, in combination with another letter, i.e., CA, CB, etc., indicates that it involves a charge that an unfair labor practice has been committed in violation of one or more subsections of Section 8.

CA:

A charge that an employer has committed unfair labor practices in violation of Section 8(a)(1), (2), (3), (4), or (5), or any combination thereof.

CB:

A charge that a labor organization has committed unfair labor practices in violation of Section 8(b)(1), (2), (3), (5), or (6), or any combination thereof.

CC:

A charge that a labor organization has committed unfair labor practices in violation of Section 8(b)(4)(i) and/or (A), (B), or (C), or any combination thereof.

CD:

A charge that a labor organization has committed an unfair labor practice in violation of Section 8(b)(4)(i) or (ii)(D). Preliminary actions under Section 10(k) for the determination of jurisdictional disputes are processed as CD cases. (See "Jurisdictional Disputes" in this glossary.)

CE:

A charge that either a labor organization or an employer, or both jointly, have committed an unfair labor practice in violation of Section 8(e).

CG:

A charge that a labor organization has committed unfair labor practices in violation of Section 8(g).

CP:

A charge that a labor organization has committed unfair labor practices in violation of Section 8(b)(7)(A), (B), or (C), or any combination thereof.

R Cases (representation cases)

A case number which contains the first letter designation R, in combination with another letter, i.e., RC, RD, RM, indicates that it is a petition for investigation and determination of a question concerning representation of employees, filed under Section 9(c) of the act.

RC:

A petition filed by a labor organization or an employee alleging that a question concerning representation has arisen and seeking an election for determination of a collective-bargaining representative.

RD:

A petition filed by employees alleging that the union previously certified or currently recognized by the employer as their collective-bargaining representative no longer represents a majority of the employees in the appropriate unit and seeking an election to determine this.

RM:

A petition filed by an employer alleging that a question concerning representation has arisen and seeking an election for the determination of a collective-bargaining representative.

Other Cases

AC:

(Amendment of Certification cases): A petition filed by a labor organization or an employer for amendment of an existing certification to reflect changed circumstances, such as changes in the name or affiliation of the labor organization involved or in the name or location of the employer involved.

AO:

(Advisory Opinion cases): As distinguished from the other types of cases described above, which are filed in and processed by Regional Offices of the Board, AO or "advisory opinion" cases are filed directly with the Board in Washington and seek a determination as to whether the Board would or would not assert jurisdiction, in any given situation on the basis of its current standards over the party or parties to a proceeding pending before a state or territorial agency or a court. (See subpart H of the Board's Rules and Regulations, Series 8, as amended.)

UC:

(Unit Clarification cases): A petition filed by a labor organization or an employer seeking a determination as to whether certain classification of employees should or should not be included within a presently existing bargaining unit.

UD:

(Union Deauthorization case): A petition filed by employees pursuant to Section 9(e)(1) requesting that the Board conduct a referendum to determine whether a union's authority to enter into a union-shop contract should be rescinded.

UD Cases

See "Other Cases—UD" under "Types of Cases."

Unfair Labor Practice Cases

See "C Cases" under "Types of Cases."

Union Deauthorization Cases

See "Other Cases—UD" under "Types of Cases."

Union-Shop Agreement

An agreement between an employer and a labor organization which requires membership in the union as a condition of employment on or after the 30th day following (1) the beginning of such employment or (2) the effective date of the agreement, whichever is the later.

Unit, Appropriate Bargaining

A grouping of employees in a plant, firm, or industry recognized by the employer, agreed upon by the parties to a case, or designated by the Board or its Regional Director, as appropriate for the purposes of collective bargaining.

Valid Vote

A secret ballot on which the choice of the voter is clearly shown.

Withdrawn Cases

Cases are closed as "withdrawn" when the charging party or petitioner, for whatever reasons, requests withdrawal of the charge of the petition and such request is approved.

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Readers are encouraged to communicate with the Agency as to questions on the tables by writing to the Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Washington, D.C. 20570.

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Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1997[1]

	Total	Identification of filing party				
		AFL–CIO unions	Other national unions	Other local unions	Individuals	Employers
	All cases					
Pending October 1, 1996	*36,068	21,010	1,247	1,710	10,490	1,611
Received fiscal 1997	39,618	22,089	795	1,796	13,031	1,907
On docket fiscal 1997	75,686	43,099	2,042	3,506	23,521	3,518
Closed fiscal 1997	38,437	21,234	891	1,723	12,620	1,969
Pending September 30, 1997	37,249	21,865	1,151	1,783	10,901	1,549
	Unfair labor practice cases[2]					
Pending October 1, 1996	*33,572	19,402	1,176	1,512	10,070	1,412
Received fiscal 1997	33,439	17,737	621	1,321	12,099	1,661
On docket fiscal 1997	67,011	37,139	1,797	2,833	22,169	3,073
Closed fiscal 1997	32,341	16,994	720	1,251	11,671	1,705
Pending September 30, 1997	34,670	20,145	1,077	1,582	10,498	1,368
	Representation cases[3]					
Pending October 1, 1996	*2,223	1,521	67	180	362	93
Received fiscal 1997	5,810	4,182	169	446	845	168
On docket fiscal 1997	8,033	5,703	236	626	1,207	261
Closed fiscal 1997	5,717	4,070	164	438	862	183
Pending September 30, 1997	2,316	1,633	72	188	345	78
	Union-shop deauthorization cases					
Pending October 1, 1996	58	—	—	—	58	—
Received fiscal 1997	87	—	—	—	87	—
On docket fiscal 1997	145	—	—	—	145	—
Closed fiscal 1996	87	—	—	—	87	—
Pending September 30, 1996	58	—	—	—	58	—
	Amendment of certification cases					
Pending October 1, 1996	12	4	0	5	0	3
Received fiscal 1997	14	8	1	2	0	3
On docket fiscal 1997	26	12	1	7	0	6
Closed fiscal 1997	16	8	1	4	0	3
Pending September 30, 1997	10	4	0	3	0	3
	Unit clarification cases					
Pending October 1, 1996	*203	83	4	13	0	103
Received fiscal 1997	268	162	4	27	0	75
On docket fiscal 1997	471	245	8	40	0	178
Closed fiscal 1997	276	162	6	30	0	78
Pending September 30, 1997	195	83	2	10	0	100

[1] See Glossary of terms for definitions. Advisory Opinion (AO) cases not included. See Table 22.
[2] See Table 1A for totals by types of cases.
[3] See Table 1B for totals by types of cases.
* Revised, reflects higher figures than reported pending September 30, 1996, in last year's annual report. Revised totals result from post-report adjustments to last year's "on docket" and/or "closed" figures.

Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 1997[1]

	Total	Identification of filing party				
		AFL–CIO unions	Other national unions	Other local unions	Individuals	Employers
	CA cases					
Pending October 1, 1996	*28,055	19,305	1,174	1,467	6,109	0
Received fiscal 1997	25,809	17,631	615	1,280	6,283	0
On docket fiscal 1997	53,864	36,936	1,789	2,747	12,392	0
Closed fiscal 1997	24,624	16,888	714	1,196	5,826	0
Pending September 30, 1997	29,240	20,048	1,075	1,551	6,566	0
	CB cases					
Pending October 1, 1996	*4,837	86	2	38	3,957	754
Received fiscal 1997	6,673	78	4	33	5,814	744
On docket fiscal 1997	11,510	164	6	71	9,771	1,498
Closed fiscal 1997	6,770	80	4	46	5,841	799
Pending September 30, 1997	4,740	84	2	25	3,930	699
	CC cases					
Pending October 1, 1996	*447	2	0	4	0	441
Received fiscal 1997	580	13	0	4	0	563
On docket fiscal 1997	1,027	15	0	8	0	1,004
Closed fiscal 1997	598	13	0	5	0	580
Pending September 30, 1997	429	2	0	3	0	424
	CD cases					
Pending October 1, 1996	*128	5	0	1	0	122
Received fiscal 1997	180	11	0	2	0	167
On docket fiscal 1997	308	16	0	3	0	289
Closed fiscal 1997	176	8	0	1	0	167
Pending September 30, 1997	132	8	0	2	0	122
	CE cases					
Pending October 1, 1996	43	2	0	0	4	37
Received fiscal 1997	34	1	0	0	2	31
On docket fiscal 1997	77	3	0	0	6	68
Closed fiscal 1997	48	1	0	0	4	43
Pending September 30, 1997	29	2	0	0	2	25
	CG cases					
Pending October 1, 1996	*14	0	0	0	0	14
Received fiscal 1997	32	0	0	0	0	32
On docket fiscal 1997	46	0	0	0	0	46
Closed fiscal 1997	24	0	0	0	0	24
Pending September 30, 1997	22	0	0	0	0	22
	CP cases					
Pending October 1, 1996	48	2	0	2	0	44
Received fiscal 1997	131	3	2	2	0	124
On docket fiscal 1997	179	5	2	4	0	168
Closed fiscal 1997	101	4	2	3	0	92
Pending September 30, 1997	78	1	0	1	0	76

[1] See Glossary of terms for definitions.

* Revised, reflects higher figures than reported pending September 30, 1996, in last year's annual report. Revised totals result from post-report adjustments to last year's "on docket" and/or "closed" figures.

Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1997[1]

	Total	Identification of filing party				
		AFL–CIO unions	Other national unions	Other local unions	Individuals	Employers
	RC cases					
Pending October 1, 1996	*1,764	1,519	67	178	0	—
Received fiscal 1997	4,797	4,182	169	446	0	—
On docket fiscal 1997	6,561	5,701	236	624	0	—
Closed fiscal 1997	4,671	4,070	164	437	0	—
Pending September 30, 1997	1,890	1,631	72	187	0	—
	RM cases					
Pending October 1, 1996	*93	—	—	—	—	93
Received fiscal 1997	168	—	—	—	—	168
On docket fiscal 1997	261	—	—	—	—	261
Closed fiscal 1997	183	—	—	—	—	183
Pending September 30, 1997	78	—	—	—	—	78
	RD cases					
Pending October 1, 1996	*366	2	0	2	362	—
Received fiscal 1997	845	0	0	0	845	—
On docket fiscal 1997	1,211	2	0	2	1,207	—
Closed fiscal 1997	863	0	0	1	862	—
Pending September 30, 1997	348	2	0	1	345	—

[1] See Glossary of terms for definitions.

* Revised, reflects higher figures than reported pending September 30, 1996, in last year's annual report. Revised totals result from post-report adjustments to last year's "on docket" and/or "closed" figures.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1997

	Number of cases showing specific allegations	Percent of total cases
A. Charges filed against employers under Sec. 8(a)		
Subsections of Sec. 8(a): Total cases	25,809	100.0
8(a)(1)	4,308	16.7
8(a)(1)(2)	251	1.0
8(a)(1)(3)	9922	38.4
8(a)(1)(4)	164	0.6
8(a)(1)(5)	7,790	30.2
8(a)(1)(2)(3)	166	0.6
8(a)(1)(2)(4)	4	0.0
8(a)(1)(2)(5)	142	0.6
8(a)(1)(3)(4)	565	2.2
8(a)(1)(3)(5)	2,192	8.5
8(a)(1)(4)(5)	21	0.1
8(a)(1)(2)(3)(4)	24	0.1
8(a)(1)(2)(3)(5)	94	0.4
8(a)(1)(2)(4)(5)	2	0.0
8(a)(1)(3)(4)(5)	143	0.6
8(a)(1)(2)(3)(4)(5)	21	0.1
Recapitulation[1]		
8(a)(1)	25,809	100.0
8(a)(2)	704	2.7
8(a)(3)	13,127	50.9
8(a)(4)	944	3.7
8(a)(5)	10,405	40.3
B. Charges filed against unions under Sec. 8(b)		
Subsections of Sec. 8(b): Total cases	7,563	100.0
8(b)(1)	5,400	71.4
8(b)(2)	41	0.5
8(b)(3)	187	2.5
8(b)(4)	760	10.0
8(b)(5)	3	0.0
8(b)(6)	4	0.1
8(b)(7)	130	1.7
8(b)(1)(2)	684	9.0
8(b)(1)(3)	272	3.6
8(b)(1)(5)	8	0.1
8(b)(1)(6)	9	0.1
8(b)(2)(3)	3	0.0
8(b)(3)(5)	2	0.0
8(b)(1)(2)(3)	50	0.7
8(b)(1)(2)(5)	2	0.0
8(b)(1)(2)(6)	1	0.0
8(b)(1)(3)(5)	3	0.0
8(b)(1)(3)(6)	2	0.0
8(b)(1)(2)(3)(5)	2	0.0

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1997—Continued

	Number of cases showing specific allegations	Percent of total cases
Recapitulation[1]		
8(b)(1)	6,433	85.1
8(b)(2)	783	10.4
8(b)(3)	521	6.9
8(b)(4)	760	10.0
8(b)(5)	18	0.2
8(b)(6)	18	0.2
8(b)(7)	130	1.7
B1. Analysis of 8(b)(4)		
Total cases 8(b)(4)	760	100.0
8(b)(4)(A)	42	5.5
8(b)(4)(B)	497	65.4
8(b)(4)(C)	8	1.1
8(b)(4)(D)	180	23.7
8(b)(4)(A)(B)	31	4.1
8(b)(4)(A)(B)(C)	1	0.1
Recapitulation[1]		
8(b)(4)(A)	75	9.9
8(b)(4)(B)	529	69.6
8(b)(4)(C)	10	1.3
8(b)(4)(D)	180	23.7
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	130	100.0
8(b)(7)(A)	42	32.3
8(b)(7)(B)	12	9.2
8(b)(7)(C)	51	39.2
8(b)(7)(A)(B)	14	10.8
8(b)(7)(A)(C)	8	6.2
8(b)(7)(A)(B)(C)	3	2.3
Recapitulation[1]		
8(b)(7)(A)	67	51.5
8(b)(7)(B)	29	22.3
8(b)(7)(C)	62	47.7
C. Charges filed under Sec. 8(e)		
Total cases 8(e)	34	100.0
Against unions alone	34	100.0
D. Charges filed under Sec. 8(g)		
Total cases 8(g)	32	100.0

[1] A single case may include allegations of violations of more than one subsection of the Act. Therefore, the total of the various allegations is greater than the total number of cases.

Table 3A.—Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 1997[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case											
		Total formal actions taken	CA	CB	CC	CD		CE	CG	CP	CA combined with CB	C combined with representation cases	Other C combinations
						Jurisdictional disputes	Unfair labor practices						
10(k) notices of hearings issued	33	32	—	—	—	32	—	—	—	—	—	—	—
Complaints issued	3,976	3,035	2,733	201	48	—	6	1	3	9	0	0	34
Backpay specifications issued	125	71	70	0	0	—	0	0	0	0	1	0	0
Hearings completed, total	486	344	307	23	2	9	0	0	0	1	0	0	2
Initial ULP hearings	482	341	304	23	2	9	0	0	0	1	0	0	2
Backpay hearings	0	0	0	0	0	—	0	0	0	0	0	0	0
Other hearings	4	3	3	0	0	—	0	0	0	0	0	0	0
Decisions by administrative law judges, total	454	333	305	20	2	—	0	0	0	1	0	0	5
Initial ULP decisions	450	331	303	20	2	—	0	0	0	1	0	0	5
Backpay decisions	4	2	2	0	0	—	0	0	0	0	0	0	0
Supplemental decisions	0	0	0	0	0	—	0	0	0	0	0	0	0
Decisions and orders by the Board, total	1,096	617	517	38	9	15	2	0	0	1	6	25	4
Upon consent of parties:													
Initial decisions	71	23	16	2	2	0	0	0	0	0	1	0	2
Supplemental decisions	21	11	9	0	0	0	0	0	0	0	1	1	0
Adopting administrative law judges' decisions (no exceptions filed):													
Initial ULP decisions	213	142	119	13	1	0	1	0	0	1	1	6	0
Backpay decisions	16	6	5	1	0	0	0	0	0	0	0	0	0
Contested:													
Initial ULP decisions	665	383	326	17	5	15	1	0	0	0	2	15	2
Decisions based on stipulated record	13	12	8	4	0	0	0	0	0	0	0	0	0
Supplemental ULP decisions	53	26	22	1	1	0	0	0	0	0	1	1	0
Backpay decisions	44	14	12	0	0	0	0	0	0	0	0	2	0

[1] See Glossary of terms for definitions.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1997[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken[2]	RC	RM	RD	UD
Hearings completed, total	918	900	823	16	61	6
Initial hearings	758	743	682	13	48	5
Hearings on objections and/or challenges	160	157	141	3	13	1
Decisions issued, total	717	698	645	12	41	6
By Regional Directors	661	647	597	12	38	6
Elections directed	598	585	543	10	32	5
Dismissals on record	63	62	54	2	6	1
By Board	56	51	48	0	3	0
Transferred by Regional Directors for initial decision	2	2	2	0	0	0
Elections directed	2	2	2	0	0	0
Dismissals on record	0	0	0	0	0	0
Review of Regional Directors' decisions: Requests for review received	376	349	312	4	33	1
Withdrawn before request ruled upon	23	22	19	1	2	0
Board action on request ruled upon, total	349	321	285	6	30	1
Granted	54	48	42	0	6	1
Denied	287	265	236	6	23	0
Remanded	8	8	7	0	1	0
Withdrawn after request granted, before Board review	1	1	1	0	0	0
Board decision after review, total	54	49	46	0	3	0
Regional Directors' decisions:						
Affirmed	26	24	23	0	1	0
Modified	8	8	8	0	0	0
Reversed	20	17	15	0	2	0
Outcome:						
Election directed	52	47	45	0	2	0
Dismissals on record	2	2	1	0	1	0

[1] See Glossary of terms for definitions.
[2] Case counts for UD not included.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1997[1]—Continued

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken[2]	RC	RM	RD	UD
Decisions on objections and/or challenges, total	442	437	400	8	29	4
By Regional Directors	47	47	45	1	1	0
By Board	395	390	355	7	28	4
In stipulated elections	341	338	304	7	27	4
No exceptions to Regional Directors' reports	189	188	169	5	14	4
Exceptions to Regional Directors' reports	152	150	135	2	13	0
In directed elections (after transfer by Regional Director)	49	47	46	0	1	0
Review of Regional Directors' supplemental decisions:						
Request for review received	39	39	37	0	2	0
Withdrawn before request ruled upon	1	1	1	0	0	0
Board action on request ruled upon, total	45	44	43	0	1	0
Granted	7	7	6	0	1	0
Denied	38	37	37	0	0	0
Remanded	0	0	0	0	0	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	5	5	5	0	0	0
Regional Directors' decisions:						
Affirmed	5	5	5	0	0	0
Modified	0	0	0	0	0	0
Reversed	0	0	0	0	0	0

[1] See Glossary of terms for definitions.
[2] Case counts for UD not included.

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1997[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	45	4	41
Decisions issued after hearing	13	6	7
By Regional Directors	78	6	72
By Board	3	0	3
Transferred by Regional Directors for initial decision	0	0	0
Review of Regional Directors' decisions:			
Requests for review received	31	30	1
Withdrawn before request ruled upon	0	0	0
Board action on requests ruled upon, total	27	27	0
Granted	6	6	0
Denied	21	21	0
Remanded	0	0	0
Withdrawn after request granted, before Board review	0	0	0
Board decision after review, total	3	0	3
Regional Directors' decisions:			
Affirmed	2	0	2
Modified	0	0	0
Reversed	1	0	1

[1] See Glossary of terms for definitions.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1997[1]

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of administrative law judge	Order of—			Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved	[2]12,361	—	—	—	—	—	—	—	—	—	—	—	—
Notice posted	3,147	2,659	2,115	68	7	276	193	488	394	11	0	51	32
Recognition or other assistance withdrawn	19	19	12	0	0	4	3	—	—	—	—	—	—
Employer-dominated union disestablished	5	5	5	0	0	0	0	—	—	—	—	—	—
Employees offered reinstatement	951	951	780	17	2	89	63	—	—	—	—	—	—
Employees placed on preferential hiring list	101	101	96	2	0	2	1	—	—	—	—	—	—
Hiring hall rights restored	15	—	—	—	—	—	—	15	10	0	0	1	4
Objections to employment withdrawn	2	—	—	—	—	—	—	2	2	0	0	0	0
Picketing ended	164	—	—	—	—	—	—	164	163	0	0	1	0
Work stoppage ended	8	—	—	—	—	—	—	8	7	0	0	1	0
Collective bargaining began	3,195	2,960	2,733	29	4	102	92	235	224	0	0	2	9
Backpay distributed	2,721	2,623	2,289	48	4	172	110	98	79	5	0	8	6
Reimbursement of fees, dues, and fines	105	50	48	0	0	1	1	55	52	0	0	0	3
Other conditions of employment improved	0	0	0	0	0	0	0	0	0	0	0	0	0
Other remedies	0	0	0	0	0	0	0	0	0	0	0	0	0
B. By number of employees affected:													
Employees offered reinstatement, total	2,821	2,821	2,266	64	6	343	142	—	—	—	—	—	—
Accepted	2,266	2,266	1,870	40	6	252	98	—	—	—	—	—	—

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1997[1]—Continued

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of administrative law judge	Order of—			Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
Declined	555	555	396	24	0	91	44	—	—	—	—	—	—
Employees placed on preferential hiring list	671	671	652	14	0	4	1	0	0	0	0	0	0
Hiring hall rights restored	21	—	—	—	—	—	—	21	12	0	0	4	5
Objections to employment withdrawn	3	—	—	—	—	—	—	3	3	0	0	0	0
Employees receiving backpay:													
From either employer or union	20,951	20,673	13,694	2,499	9	2,858	1,613	258	213	0	0	15	30
From both employer and union	34	32	4	16	0	12	0	2	1	0	0	1	0
Employees reimbursed for fees, dues, and fines:													
From either employer or union	1,463	1,047	997	0	0	37	13	416	390	0	0	0	26
From both employer and union	328	43	43	0	0	0	0	285	285	0	0	0	0
C. By amounts of monetary recovery, total	$80,366,955	79,329,732	43,225,475	6,854,875	28,324	10,695,812	18,525,246	1,037,223	538,828	0	0	158,740	339,655
Backpay (includes all monetary payments except fees, dues, and fines)	79,601,595	78,840,269	42,873,441	6,854,875	28,324	10,641,278	18,442,351	761,326	404,103	0	0	108,740	250,483
Reimbursement of fees, dues, and fines	765,360	489,463	352,034	0	0	54,534	82,895	275,897	134,725	0	0	52,000	89,172

[1] See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during fiscal year 1997 after the company and/or union had satisfied all remedial action requirements.

[2] A single case usually results in more than one remedial action; therefore, the total number of actions exceeds the number of cases involved.

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Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1997[1]

Industrial group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Food and kindred products	1,618	1,364	1,040	305	13	2	0	0	4	238	195	8	35	5	1	10
Tobacco manufactures	11	10	3	6	1	0	0	0	0	1	1	0	0	0	0	0
Textile mill products	213	188	152	36	0	0	0	0	0	25	17	1	7	0	0	0
Apparel and other finished products made from fabric and similar materials	171	147	122	23	1	0	0	0	1	24	17	2	5	0	0	0
Lumber and wood products (except furniture)	295	227	185	41	1	0	0	0	0	67	57	5	5	0	0	0
Furniture and fixtures	254	217	181	34	2	0	0	0	0	36	31	0	5	1	0	0
Paper and allied products	564	495	385	99	8	0	2	0	1	62	49	0	13	1	0	0
Printing, publishing, and allied products	743	624	501	116	3	4	0	0	0	107	72	1	34	2	0	10
Chemicals and allied products	544	464	357	98	1	4	0	0	4	71	52	2	17	3	0	6
Petroleum refining and related industries	186	166	136	30	0	0	0	0	0	19	15	2	2	0	0	1
Rubber and miscellaneous plastic products	474	409	329	78	1	0	0	0	1	62	51	0	11	1	0	2
Leather and leather products	68	67	48	19	0	0	0	0	0	1	1	0	0	0	0	0
Stone, clay, glass, and concrete products	526	435	328	92	8	4	0	0	3	81	59	3	19	4	0	6
Primary metal industries	918	809	650	154	3	1	0	0	1	101	79	1	21	3	0	5
Fabricated metal products (except machinery and transportation equipment)	1,010	846	649	165	22	1	6	0	3	156	124	2	30	3	0	5
Machinery (except electrical)	926	780	641	134	2	3	0	0	0	140	100	11	29	1	0	5
Electrical and electronic machinery, equipment, and supplies	540	481	364	113	3	1	0	0	0	58	39	1	18	1	0	1
Aircraft and parts	233	215	120	95	0	0	0	0	0	18	17	0	1	0	0	0
Ship and boat building and repairing	142	127	80	46	0	0	0	0	1	15	13	1	1	0	0	0
Automotive and other transportation equipment	936	812	534	272	5	1	0	0	0	123	108	0	15	1	0	0
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods, watches and clocks	145	116	90	26	0	0	0	0	0	27	13	0	14	1	1	0
Miscellaneous manufacturing industries	290	174	138	32	4	0	0	3	0	108	85	2	21	0	0	8
Manufacturing	10,807	9,173	7,033	2,014	78	21	8	0	19	1,540	1,195	42	303	26	2	66
Metal mining	54	48	41	7	0	0	0	0	0	6	3	0	3	0	0	0
Coal mining	166	158	110	32	15	0	1	0	0	8	8	0	0	0	0	0
Oil and gas extraction	32	22	15	7	0	0	0	0	0	10	7	1	2	0	0	0
Mining and quarrying of nonmetallic minerals (except fuels)	91	76	65	11	0	0	0	0	0	12	9	0	3	1	0	2
Mining	343	304	231	57	15	0	1	0	0	36	27	1	8	1	0	2
Construction	5,000	4,375	3,266	649	272	107	11	0	70	611	521	41	49	1	1	12

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1997[1]—Continued

Industrial group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Wholesale trade	1,603	1,288	1,033	235	16	2	0	0	2	301	249	8	44	5	0	9
Retail trade	2,310	1,839	1,436	377	21	0	0	0	5	447	339	16	92	6	1	17
Finance, insurance, and real estate	664	555	387	145	16	3	0	0	4	103	88	1	14	0	0	6
U.S. Postal Service	3,324	3,324	2,580	742	1	0	1	0	0	0	0	0	0	0	0	0
Local and suburban transit and interurban highway passenger transportation	817	594	498	95	1	0	0	0	0	212	191	1	20	4	0	7
Motor freight transportation and warehousing	2,566	2,116	1,710	360	29	7	5	0	5	428	384	5	39	8	1	13
Water transportation	312	286	133	119	19	9	5	0	1	25	20	0	5	0	0	1
Other transportation	544	425	311	101	11	2	0	0	0	111	101	1	9	3	2	3
Communication	941	846	668	167	4	4	0	0	3	88	58	2	28	1	0	6
Electric, gas, and sanitary services	1,018	823	640	173	8	1	1	0	0	177	151	4	22	1	2	15
Transportation, communication, and other utilities	6,198	5,090	3,960	1,015	72	23	11	0	9	1,041	905	13	123	17	5	45
Hotels, rooming houses, camps, and other lodging places	664	548	392	147	7	0	1	0	1	112	82	12	18	3	0	1
Personal services	199	140	127	10	2	0	1	0	0	53	38	1	14	5	0	1
Automotive repair, services, and garages	433	300	240	58	2	0	0	0	0	126	97	5	24	1	0	6
Motion pictures	220	199	134	60	2	3	0	0	0	21	18	1	2	0	0	0
Amusement and recreation services (except motion pictures)	451	380	304	64	7	3	0	0	2	68	60	1	7	1	0	2
Health services	3,421	2,725	2,272	398	17	2	0	32	4	625	559	8	58	9	0	62
Educational services	238	181	139	38	4	0	0	0	0	50	38	3	9	0	2	5
Membership organizations	615	516	324	175	12	3	0	0	2	77	69	1	7	2	2	18
Business services	2,298	1,877	1,431	390	31	12	0	0	13	404	354	6	44	8	1	8
Miscellaneous repair services	87	65	55	7	2	1	0	0	0	21	18	0	3	1	0	0
Legal services	41	33	30	3	0	0	0	0	0	8	4	0	4	0	0	0
Museums, art galleries, and botanical and zoological gardens	16	10	8	2	0	0	0	0	0	6	6	0	0	0	0	0
Social services	452	344	287	55	2	0	0	0	0	101	80	6	15	1	0	6
Miscellaneous services	129	103	76	26	1	0	0	0	0	26	21	1	4	0	0	0
Services	9,264	7,421	5,819	1,433	89	24	2	32	22	1,698	1,444	45	209	31	5	109
Public administration	105	70	64	6	0	0	0	0	0	33	29	1	3	0	0	2
Total, all industrial groups	39,618	33,439	25,809	6,673	580	180	34	32	131	5,810	4,797	168	845	87	14	268

[1] See Glossary of terms for definitions.
[2] Source: Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C., 1972.

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1997[1]

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Maine	135	119	103	16	0	0	0	0	0	14	13	0	1	0	0	2
New Hampshire	52	40	30	10	0	0	0	0	0	9	6	0	3	0	0	3
Vermont	54	45	43	2	0	0	0	0	0	9	5	0	4	0	0	0
Massachusetts	1,290	1,130	873	187	40	8	1	1	20	146	119	1	26	0	0	14
Rhode Island	235	190	156	26	7	1	0	0	0	42	37	0	5	1	0	2
Connecticut	602	506	424	76	2	3	0	1	0	89	81	1	7	1	0	6
New England	2,368	2,030	1,629	317	49	12	1	2	20	309	261	2	46	2	0	27
New York	4,765	4,128	2,889	1,048	95	49	1	12	34	598	505	23	70	6	2	31
New Jersey	1,682	1,361	1,037	264	32	14	8	1	5	303	268	6	29	7	0	11
Pennsylvania	2,455	2,085	1,648	330	69	17	7	0	14	349	288	10	51	6	0	15
Middle Atlantic	8,902	7,574	5,574	1,642	196	80	16	13	53	1,250	1,061	39	150	19	2	57
Ohio	2,229	1,853	1,463	351	32	2	0	0	5	352	294	14	44	4	1	19
Indiana	1,391	1,203	993	179	24	5	1	0	1	182	139	2	41	0	0	6
Illinois	2,501	2,022	1,430	474	78	19	2	2	17	462	370	11	81	8	0	9
Michigan	2,109	1,795	1,337	428	22	4	1	2	1	290	232	12	46	7	0	17
Wisconsin	737	561	467	87	6	0	0	0	1	153	124	6	23	7	0	16
East North Central	8,967	7,434	5,690	1,519	162	30	4	4	25	1,439	1,159	45	235	26	1	67
Iowa	235	180	131	43	2	0	4	0	0	52	36	6	10	0	0	3
Minnesota	433	288	228	47	9	3	0	0	1	132	97	2	33	5	1	7
Missouri	1,144	950	707	198	18	24	1	0	2	190	154	4	32	2	0	2
North Dakota	41	34	30	4	0	0	0	0	0	7	7	0	0	0	0	0
South Dakota	34	28	26	2	0	0	0	0	0	6	6	0	0	0	0	0
Nebraska	120	106	92	11	3	0	0	0	0	14	11	0	3	0	0	0
Kansas	254	202	145	47	8	2	0	0	0	48	40	1	7	0	0	4
West North Central	2,261	1,788	1,359	352	40	29	5	0	3	449	351	13	85	7	1	16
Delaware	101	71	61	9	1	0	0	0	0	29	28	0	1	1	0	0
Maryland	564	478	362	114	1	1	0	0	0	85	78	0	7	0	0	1

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1997[1]—Continued

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
District of Columbia	148	128	100	24	4	0	0	0	0	16	15	0	1	1	1	2
Virginia	426	374	288	85	1	0	0	0	0	51	42	3	6	0	0	1
West Virginia	521	467	392	58	16	1	0	0	0	50	41	0	9	4	0	0
North Carolina	361	324	274	49	1	0	0	0	0	36	31	0	5	0	0	1
South Carolina	135	116	101	15	0	0	0	0	0	18	17	0	1	0	0	1
Georgia	705	622	507	113	2	0	0	0	0	79	62	5	12	1	0	3
Florida	1,160	992	813	172	5	0	0	2	0	167	149	1	17	0	1	0
South Atlantic	4,121	3,572	2,898	639	31	2	0	2	0	531	463	9	59	7	2	9
Kentucky	621	526	459	60	4	3	0	0	0	89	79	2	8	3	0	3
Tennessee	731	649	536	111	1	1	0	0	0	77	65	0	12	0	0	5
Alabama	480	424	354	69	1	0	0	0	0	55	40	0	15	0	1	0
Mississippi	189	167	131	36	0	0	0	0	0	21	20	0	1	0	0	1
East South Central	2,021	1,766	1,480	276	6	4	0	0	0	242	204	2	36	3	1	9
Arkansas	210	177	147	30	0	0	0	0	0	30	21	2	7	0	0	3
Louisiana	485	437	370	62	2	0	0	0	3	48	36	0	12	0	0	0
Oklahoma	232	194	158	34	1	0	0	1	0	36	31	0	5	2	0	0
Texas	1,162	1,060	836	222	2	0	0	0	0	98	75	2	21	1	2	1
West South Central	2,089	1,868	1,511	348	5	0	0	1	3	212	163	4	45	3	2	4
Montana	127	100	84	13	2	0	0	1	0	25	17	0	8	2	0	0
Idaho	110	82	79	3	0	0	0	0	0	28	25	0	3	0	0	0
Wyoming	46	39	31	8	0	0	0	0	0	7	7	0	0	0	0	0
Colorado	657	615	518	93	2	0	2	0	0	40	37	0	3	0	0	2
New Mexico	182	153	128	25	0	0	0	0	0	29	24	1	4	0	0	0
Arizona	375	326	271	55	0	0	0	0	0	44	40	1	3	1	1	3
Utah	147	120	106	9	3	0	1	0	1	26	23	0	3	0	0	1
Nevada	565	495	394	90	11	0	0	0	0	69	58	4	7	0	0	1
Mountain	2,209	1,930	1,611	296	18	0	3	1	1	268	231	6	31	3	1	7

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1997[1]—Continued

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Washington	966	748	586	155	5	2	0	0	0	192	163	4	25	5	1	20
Oregon	422	327	245	62	8	6	0	4	2	89	63	9	17	3	0	3
California	4,240	3,574	2,584	902	52	8	2	5	21	620	509	22	89	7	1	38
Alaska	156	101	83	16	1	0	1	0	0	50	46	2	2	0	2	3
Hawaii	380	321	252	50	7	7	2	0	3	54	43	2	9	1	0	4
Guam	25	24	24	0	0	0	0	0	0	1	1	0	0	0	0	0
Pacific	6,189	5,095	3,774	1,185	73	23	5	9	26	1,006	825	39	142	16	4	68
Puerto Rico	453	365	270	95	0	0	0	0	0	83	62	7	14	1	0	4
Virgin Islands	26	14	10	4	0	0	0	0	0	12	12	0	0	0	0	0
Outlying areas	479	379	280	99	0	0	0	0	0	95	74	7	14	1	0	4
Total, all States and areas	39,606	33,436	25,806	6,673	580	180	34	32	131	5,801	4,792	166	843	87	14	268

[1] See Glossary of terms for definitions.
[2] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

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Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1997[1]

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Connecticut	602	506	424	76	2	3	0	1	0	89	81	1	7	1	0	6
Maine	135	119	103	16	0	0	0	0	0	14	13	0	1	0	0	2
Massachusetts	1,290	1,130	873	187	40	8	1	1	20	146	119	1	26	0	0	14
New Hampshire	52	40	30	10	0	0	0	0	0	9	6	0	3	0	0	3
Rhode Island	235	190	156	26	7	1	0	0	0	42	37	0	5	1	0	2
Vermont	54	45	43	2	0	0	0	0	0	9	5	0	4	0	0	0
Region I	2,368	2,030	1,629	317	49	12	1	2	20	309	261	2	46	2	0	27
Delaware	101	71	61	9	1	0	0	0	0	29	28	0	1	1	0	0
New Jersey	1,682	1,361	1,037	264	32	14	8	1	5	303	268	6	29	7	0	11
New York	4,765	4,128	2,889	1,048	95	49	1	12	34	598	505	23	70	6	2	31
Puerto Rico	453	365	270	95	0	0	0	0	0	83	62	7	14	1	0	4
Virgin Islands	26	14	10	4	0	0	0	0	0	12	12	0	0	0	0	0
Region II	7,027	5,939	4,267	1,420	128	63	9	13	39	1,025	875	36	114	15	2	46
District of Columbia	148	128	100	24	4	0	0	0	0	16	15	0	1	1	1	2
Maryland	564	478	362	114	1	1	0	0	0	85	78	0	7	0	0	1
Pennsylvania	2,455	2,085	1,648	330	69	17	7	0	14	349	288	10	51	6	0	15
Virginia	426	374	288	85	1	0	0	0	0	51	42	3	6	0	0	1
West Virginia	521	467	392	58	16	1	0	0	0	50	41	0	9	4	0	0
Region III	4,114	3,532	2,790	611	91	19	7	0	14	551	464	13	74	11	1	19
Alabama	480	424	355	69	1	0	0	0	0	55	40	0	15	0	1	0
Florida	1,160	992	813	172	5	0	0	2	0	167	149	1	17	0	1	0
Georgia	705	622	507	113	2	0	0	0	0	79	62	5	12	1	0	3
Kentucky	621	526	459	60	4	3	0	0	0	89	79	2	8	3	0	3
Mississippi	189	167	131	36	0	0	0	0	0	21	20	0	1	0	0	1
North Carolina	361	324	274	49	1	0	0	0	0	36	31	0	5	0	0	1

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1997[1]—Continued

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
South Carolina	135	116	101	15	0	0	0	0	0	18	17	0	1	0	0	1
Tennessee	731	649	536	111	1	1	0	0	0	77	65	0	12	0	0	5
Region IV	4,382	3,820	3,175	625	14	4	0	2	0	542	463	8	71	4	2	14
Illinois	2,501	2,022	1,430	474	78	19	2	2	17	462	370	11	81	8	0	9
Indiana	1,391	1,203	993	179	24	5	1	0	1	182	139	2	41	0	0	6
Michigan	2,109	1,795	1,337	428	22	4	1	2	1	290	232	12	46	7	0	17
Minnesota	433	288	228	47	9	3	0	0	1	132	97	2	33	5	1	7
Ohio	2,229	1,853	1,463	351	32	2	0	0	5	352	294	14	44	4	1	19
Wisconsin	737	561	467	87	6	0	0	0	1	153	124	6	23	7	0	16
Region V	9,400	7,722	5,918	1,566	171	33	4	4	26	1,571	1,256	47	268	31	2	74
Arkansas	210	177	147	30	0	0	0	0	0	30	21	2	7	0	0	3
Louisiana	485	437	370	62	2	0	0	0	3	48	36	0	12	0	0	0
New Mexico	182	153	128	25	0	0	0	0	0	29	24	1	4	0	0	0
Oklahoma	232	194	158	34	1	0	0	1	0	36	31	0	5	2	0	0
Texas	1,162	1,060	836	222	2	0	0	0	0	98	75	2	21	1	2	1
Region VI	2,271	2,021	1,639	373	5	0	0	1	3	241	187	5	49	3	2	4
Iowa	235	180	131	43	2	0	4	0	0	52	36	6	10	0	0	3
Kansas	254	202	145	47	8	2	0	0	0	48	40	1	7	0	0	4
Missouri	1,144	950	707	198	18	24	1	0	2	190	154	4	32	2	0	2
Nebraska	120	106	92	11	3	0	0	0	0	14	11	0	3	0	0	0
Region VII	1,753	1,438	1,075	299	31	26	5	0	2	304	241	11	52	2	0	9
Colorado	657	615	518	93	2	0	2	0	0	40	37	0	3	0	0	2
Montana	127	100	84	13	2	0	0	1	0	25	17	0	8	2	0	0
North Dakota	41	34	30	4	0	0	0	0	0	7	7	0	0	0	0	0
South Dakota	34	28	26	2	0	0	0	0	0	6	6	0	0	0	0	0
Utah	147	120	106	9	3	0	1	0	1	26	23	0	3	0	0	1
Wyoming	46	39	31	8	0	0	0	0	0	7	7	0	0	0	0	0

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1997[1]—Continued

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Region VIII	1,052	936	795	129	7	0	3	1	1	111	97	0	14	2	0	3
Arizona	375	326	271	55	0	0	0	0	0	44	40	1	3	1	1	3
California	4,240	3,574	2,584	902	52	8	2	5	21	520	509	22	89	7	1	38
Hawaii	380	321	252	50	7	7	2	0	3	54	43	2	9	1	0	4
Guam	25	24	24	0	0	0	0	0	0	1	1	0	0	0	0	0
Nevada	565	495	394	90	11	0	0	0	0	69	58	4	7	0	0	1
Region IX	5,585	4,740	3,525	1,097	70	15	4	5	24	788	651	29	108	9	2	46
Alaska	156	101	83	16	1	0	1	0	0	50	46	2	2	0	2	3
Idaho	110	82	79	3	0	0	0	0	0	28	25	0	3	0	0	0
Oregon	422	327	245	62	8	6	0	4	2	89	63	9	17	3	0	3
Washington	966	748	586	155	5	2	0	0	0	192	163	4	25	5	1	20
Region X	1,654	1,258	993	236	14	8	1	4	2	359	297	15	47	8	3	26
Total, all States and areas	39,606	33,436	25,806	6,673	580	180	34	32	131	5,801	4,792	166	843	87	14	268

[1] See Glossary of terms for definitions.
[2] The States are grouped according to the 10 Standard Federal Administrative Regions.

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Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1997[1]

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed	32,341	100.0	0.0	24,624	100.0	6,770	100.0	598	100.0	176	100.0	48	100.0	24	100.0	101	100.0
Agreement of the parties	11,546	35.7	100.0	9,987	40.5	1,179	17.4	308	51.5	2	1.1	15	31.2	13	54.1	42	41.5
Informal settlement	11,484	35.5	99.5	9,939	40.3	1,167	17.2	306	51.1	2	1.1	15	31.2	13	54.1	42	41.5
Before issuance of complaint	8,556	26.5	74.1	7,338	29.8	912	13.4	246	41.1	(2)	—	13	27.0	12	50.0	35	34.6
After issuance of complaint, before opening of hearing	2,847	8.8	24.7	2,523	10.2	252	3.7	60	10.0	2	1.1	2	4.1	1	4.1	7	6.9
After hearing opened, before issuance of administrative law judge's decision	81	0.3	0.7	78	0.3	3	0.0	0	—	0	—	0	—	0	—	0	—
Formal settlement	62	0.2	0.5	48	0.1	12	0.1	2	0.3	0	—	0	—	0	—	0	—
Before opening of hearing	36	0.1	0.3	31	0.1	3	0.0	2	0.3	0	—	0	—	0	—	0	—
Stipulated decision	5	0.0	0.0	5	0.0	0	—	0	—	0	—	0	—	0	—	0	—
Consent decree	31	0.1	0.3	26	0.1	3	0.0	2	0.3	0	—	0	—	0	—	0	—
After hearing opened	26	0.1	0.2	17	0.0	9	0.1	0	—	0	—	0	—	0	—	0	—
Stipulated decision	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
Consent decree	26	0.1	0.2	17	0.0	9	0.1	0	—	0	—	0	—	0	—	0	—
Compliance with	801	2.5	100.0	688	2.7	86	1.2	17	2.8	4	2.2	5	10.4	0	—	1	0.9

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1997[1]—Continued

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Administrative law judge's decision	12	0.0	1.5	12	0.0	0	—	0	—	0	—	0	—	0	—	0	—
Board decision	519	1.6	64.8	436	1.7	66	0.9	8	1.3	3	1.7	5	10.4	0	—	1	0.9
Adopting administrative law judge's decision (no exceptions filed)	307	0.9	38.3	254	1.0	46	0.6	4	0.6	2	1.1	0	—	0	—	1	0.9
Contested	212	0.7	26.5	182	0.7	20	0.2	4	0.6	1	0.5	5	10.4	0	—	0	—
Circuit court of appeals decree	270	0.8	33.7	240	0.9	20	0.2	9	1.5	1	0.5	0	—	0	—	0	—
Supreme Court action	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
Withdrawal	10,043	31.1	100.0	7,879	31.9	1,920	28.3	175	29.2	0	—	16	33.3	7	29.1	46	45.5
Before issuance of complaint	9,799	30.3	97.6	7,671	31.1	1,892	27.9	169	28.2	(2)	—	16	33.3	7	29.1	44	43.5
After issuance of complaint, before opening of hearing	234	0.7	2.3	199	0.8	27	0.3	6	1.0	0	—	0	—	0	—	2	1.9
After hearing opened, before administrative law judge's decision	10	0.0	0.1	9	0.0	1	0.0	0	—	0	—	0	—	0	—	0	—
After administrative law judge's decision, before Board decision	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
After Board or court decision	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
Dismissal	9,719	30.1	100.0	6,008	24.3	3,583	52.9	98	16.3	2	1.1	12	25.0	4	16.6	12	11.8
Before issuance of complaint	9,456	29.2	97.3	5,799	23.5	3,537	52.2	95	15.8	(2)	—	9	18.7	4	16.6	12	11.8
After issuance of complaint, before opening of hearing	116	0.4	1.2	78	0.3	33	0.4	0	—	2	1.1	3	6.2	0	—	0	—
After hearing opened, before administrative law judge's decision	7	0.0	0.1	7	0.0	0	—	0	—	0	—	0	—	0	—	0	—
By administrative law judge's decision	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
By Board decision	137	0.4	1.4	121	0.4	13	0.1	3	0.5	0	—	0	—	0	—	0	—
Adopting administrative law judge's decision (no exceptions filed)	30	0.1	0.3	28	0.1	2	0.0	0	—	0	—	0	—	0	—	0	—
Contested	107	0.3	1.1	93	0.3	11	0.1	3	0.5	0	—	0	—	0	—	0	—

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1997[1]—Continued

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
By circuit court of appeals decree	3	0.0	0.0	3	0.0	0	—	0	—	0	—	0	—	0	—	0	—
By Supreme Court action	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
10(k) actions (see Table 7A for details of dispositions)	168	0.5	0.0	0	—	0	—	0	—	168	95.4	0	—	0	—	0	—
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business)	64	0.2	0.0	62	0.2	2	0.0	0	—	0	—	0	—	0	—	0	—

[1] See Table 8 for summary of disposition by stage. See Glossary of terms for definitions.
[2] CD cases closed in this stage are processed as jurisdictional disputes under Sec. 10(k) of the Act. See Table 7A.

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Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1997[1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	168	100.0
Agreement of the parties—informal settlement	75	44.6
Before 10(k) notice	57	33.9
After 10(k) notice, before opening of 10(k) hearing	18	10.7
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	0.0
Compliance with Board decision and determination of dispute	1	0.6
Withdrawal	54	32.1
Before 10(k) notice	48	28.6
After 10(k) notice, before opening of 10(k) hearing	4	2.4
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	0.0
After Board decision and determination of dispute	2	1.2
Dismissal	38	22.6
Before 10(k) notice	34	20.2
After 10(k) notice, before opening of 10(k) hearing	4	2.4
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	0.0
By Board decision and determination of dispute	0	0.0

[1] See Glossary of terms for definitions.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1997[1]

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed
Total number of cases closed	32,341	100.0	24,624	100.0	6,770	100.0	598	100.0	176	100.0	48	100.0	24	100.0	101	100.0
Before issuance of complaint	27,979	86.5	20,808	84.5	6,341	93.7	510	85.3	168	95.5	38	79.2	23	95.8	91	90.1
After issuance of complaint, before opening of hearing	3,233	10.0	2,831	11.5	315	4.7	68	11.4	4	2.3	5	10.4	1	4.2	9	8.9
After hearing opened, before issuance of administrative law judge's decision	124	0.4	111	0.5	13	0.2	0	—	0	—	0	—	0	—	0	—
After administrative law judge's decision, before issuance of Board decision	20	0.1	19	0.1	1	0.0	0	—	0	—	0	—	0	—	0	—
After Board order adopting administrative law judge's decision in absence of exceptions	356	1.1	301	1.2	48	0.7	4	0.7	2	1.1	0	—	0	—	1	1.0
After Board decision, before circuit court decree	337	1.0	292	1.2	32	0.5	7	1.2	1	0.6	5	10.4	0	—	0	—
After circuit court decree, before Supreme Court action	292	0.9	262	1.1	20	0.3	9	1.5	1	0.6	0	—	0	—	0	—
After Supreme Court action	0	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—

[1] See Glossary of terms for definitions.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1997[1]

Stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	5,717	100.0	4,671	100.0	183	100.0	863	100.0	87	100.0
Before issuance of notice of hearing	1,360	23.9	897	19.2	85	46.4	387	44.8	73	83.9
After issuance of notice, before close of hearing	3,568	62.4	3,051	65.3	85	46.4	432	50.1	4	4.6
After hearing closed, before issuance of decision	67	1.2	61	1.3	0	.0	6	.7	0	.0
After issuance of Regional Director's decision	712	12.5	661	14.2	13	7.1	38	4.4	10	11.5
After issuance of Board decision	1	.0	1	.0	0	.0	0	.0	0	.0

[1] See Glossary of terms for definitions.

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1997[1]

Method and stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total, all	5,717	100.0	4,671	100.0	183	100.0	863	100.0	87	100.0
Certification issued, total	3,588	62.8	3,112	66.6	56	30.6	420	48.7	46	52.9
After:										
Consent election	15	.3	13	.3	0	.0	2	.2	0	.0
Before notice of hearing	1	.0	1	.0	0	.0	0	.0	0	.0
After notice of hearing, before hearing closed	14	.2	12	.3	0	.0	2	.2	0	.0
After hearing closed, before decision	0	.0	0	.0	0	.0	0	.0	0	.0
Stipulated election	3,033	53.1	2,596	55.6	48	26.2	389	45.1	37	42.5
Before notice of hearing	743	13.0	573	12.3	22	12.0	148	17.1	36	41.4
After notice of hearing, before hearing closed	2,272	39.7	2,007	43.0	26	14.2	239	27.7	1	1.1
After hearing closed, before decision	18	.3	16	.3	0	.0	2	.2	0	.0
Expedited election	3	.1	0	.0	2	1.1	1	.1	0	.0
Regional Director-directed election	537	9.4	502	10.8	6	3.3	28	3.2	9	10.3
Board-directed election	0	.0	0	.0	0	.0	0	.0	0	.0
By withdrawal, total	1,815	31.7	1,424	30.5	90	49.2	301	34.9	36	41.4
Before notice of hearing	470	8.2	287	6.1	36	19.7	147	17.0	34	39.1
After notice of hearing, before hearing closed	1,209	21.1	1,009	21.6	50	27.3	150	17.4	2	2.3
After hearing closed, before decision	43	.8	41	.9	0	.0	2	.2	0	.0
After Regional Director's decision and direction of election	93	1.6	87	1.9	4	2.2	2	.2	0	.0
After Board decision and direction of election	0	.0	0	.0	0	.0	0	.0	0	.0
By dismissal, total	314	5.5	135	2.9	37	20.2	142	16.5	5	5.7
Before notice of hearing	153	2.7	36	.8	25	13.7	92	10.7	3	3.4
After notice of hearing, before hearing closed	72	1.3	23	.5	9	4.9	40	4.6	1	1.1
After hearing closed, before decision	3	.1	1	.0	0	.0	2	.2	0	.0
By Regional Director's decision	85	1.5	74	1.6	3	1.6	8	.9	1	1.1
By Board decision	1	.0	1	.0	0	.0	0	.0	0	.0

[1] See Glossary of terms for definitions.

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1997

	AC	UC
Total, all	16	276
Certification amended or unit clarified	5	18
Before hearing	0	0
By Regional Director's decision	0	0
By Board decision	0	0
After hearing	5	18
By Regional Director's decision	5	18
By Board decision	0	0
Dismissed	3	68
Before hearing	0	8
By Regional Director's decision	0	8
By Board decision	0	0
After hearing	3	60
By Regional Director's decision	3	60
By Board decision	0	0
Withdrawn	8	190
Before hearing	8	181
After hearing	0	9

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1997[1]

Type of case	Type of election					
	Total	Consent	Stipulated	Board-directed	Regional Director-directed	Expedited elections under 8(b)(7)(C)
All types, total:						
Elections	3,517	15	2,911	10	579	2
Eligible voters	238,755	323	181,967	2,838	53,615	12
Valid votes	207,039	303	159,110	2,392	45,230	4
RC cases:						
Elections	3,029	13	2,479	10	527	0
Eligible voters	215,562	273	162,818	2,838	49,633	0
Valid votes	187,290	253	142,304	2,392	42,341	0
RM cases:						
Elections	46	0	38	0	6	2
Eligible voters	2,037	0	1,874	0	151	12
Valid votes	1,718	0	1,611	0	103	4
RD cases						
Elections	405	2	368	0	35	0
Eligible voters	18,417	50	15,807	0	2,560	0
Valid votes	16,167	50	14,045	0	2,072	0
UD cases:						
Elections	37	0	26	0	11	—
Eligible voters	2,739	0	1,468	0	1,271	—
Valid votes	1,864	0	1,150	0	714	—

[1] See Glossary of terms for definitions.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1997

Type of election	All R elections				RC elections				RM elections				RD elections			
	Elections conducted				Elections conducted				Elections conducted				Elections conducted			
	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification[1]	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification
All types	3,687	87	120	3,480	3,214	74	111	3,029	52	3	3	46	421	10	6	405
Rerun required	—	—	99	—	—	—	92	—	—	—	1	—	—	—	6	—
Runoff required	—	—	21	—	—	—	19	—	—	—	2	—	—	—	0	—
Consent elections	16	0	1	15	14	0	1	13	0	0	0	0	2	0	0	2
Rerun required	—	—	1	—	—	—	1	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	—	—	—	0	—	—	—	0	—	
								D—								
Stipulated elections	3,030	62	83	2,885	2,609	54	76	2,479	40	1	1	38	381	7	6	368
Rerun required	—	—	71	—	—	—	64	—	—	—	1	—	—	—	6	—
Runoff required	—	—	12	—	—	—	12	—	—	—	0	—	—	—	0	—
Regional Director-directed	627	25	34	568	581	20	34	527	8	2	0	6	38	3	0	35
Rerun required	—	—	27	—	—	—	27	—	—	—	0	—	—	—	0	—
Runoff required	—	—	7	—	—	—	7	—	—	—	0	—	—	—	0	—
Board-directed	10	0	0	10	10	0	0	10	0	0	0	0	0	0	0	0
Rerun required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Expedited—Sec. 8(b)(7)(C)	4	0	2	2	0	0	0	0	4	0	2	2	0	0	0	0
Rerun required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Runoff required	—	—	—	—	—	—	0	—	—	—	2	—	—	—	0	—

[1] The total of representation elections resulting in certification excludes elections held in UD cases which are included in the totals in Table 11.

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed, Fiscal Year 1997

	Total elections	Objections only		Challenges only		Objections and challenges		Total objections[1]		Total challenges[2]	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections	3,687	134	3.6	58	1.6	30	0.8	164	4.4	88	2.4
By type of case:											
In RC cases	3,214	121	3.8	55	1.7	29	0.9	150	4.7	84	2.6
In RM cases	52	4	7.7	0	—	0	—	4	7.7	0	—
In RD cases	421	9	2.1	3	0.7	1	0.2	10	2.4	4	1.0
By type of election:											
Consent elections	16	0	—	0	—	0	—	0	—	0	—
Stipulated elections	3,030	95	3.1	39	1.3	19	0.6	114	3.8	58	1.9
Expedited elections	4	0	—	0	—	0	—	0	—	0	—
Regional Director-directed elections	627	39	6.2	18	2.9	11	1.8	50	8.0	29	4.6
Board-directed elections	10	0	—	1	10.0	0	—	0	—	1	10.0

[1] Number of elections in which objections were ruled on, regardless of number of allegations in each election.
[2] Number of elections in which challenges were ruled on, regardless of individual ballots challenged in each election.

Table 11C.—Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1997[1]

	Total		By employer		By union		By both parties[2]	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	270	100.0	108	40.0	157	58.1	5	1.9
By type of case:								
RC cases	241	100.0	104	43.2	132	54.8	5	2.0
RM cases	7	100.0	1	14.3	6	85.7	0	—
RD cases	22	100.0	3	13.6	19	86.4	0	—
By type of election:								
Consent elections	0	—	0	—	0	—	0	—
Stipulated elections	192	100.0	72	37.5	115	59.9	5	2.6
Expedited elections	2	100.0	0	—	2	100.0	0	—
Regional Director-directed elections	75	100.0	35	46.7	40	53.3	0	—
Board-directed elections	1	100.0	1	100.0	0	—	0	—

[1] See Glossary of terms for definitions.
[2] Objections filed by more than one party in the same cases are counted as one.

Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1997[1]

	Objections filed	Objections withdrawn	Objections ruled upon	Overruled		Sustained[2]	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All representation elections	270	106	164	131	79.9	33	20.1
By type of case:							
RC cases	241	91	150	120	80.0	30	20.0
RM cases	7	3	4	2	50.0	2	50.0
RD cases	22	12	10	9	90.0	1	10.0
By type of election:							
Consent elections	0	0	0	0	—	0	—
Stipulated elections	192	78	114	93	81.6	21	18.4
Expedited elections	2	2	0	0	—	0	—
Regional Director-directed elections	75	25	50	38	76.0	12	24.0
Board-directed elections	1	1	0	0	—	0	—

[1] See Glossary of terms for definitions.
[2] See Table 11E for rerun elections held after objections were sustained. In 3 elections in which objections were sustained, the cases were subsequently withdrawn. Therefore, in these cases no rerun elections were conducted.

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1997[1]

	Total rerun elections [2]		Union certified		No union chosen		Outcome of original election reversed	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	88	100.0	29	33	59	67.0	31	35.2
By type of case:								
RC cases	83	100.0	28	33.7	55	66.3	30	36.1
RM cases	1	100.0	0	—	1	100.0	0	—
RD cases	4	100.0	1	25.0	3	75.0	1	25.0
By type of election:								
Consent elections	1	100.0	0	—	1	100.0	0	—
Stipulated elections	63	100.0	20	31.7	43	68.3	21	33.3
Expedited elections	0	—	0	—	0	—	0	—
Regional Director-directed elections	24	100.0	9	37.5	15	62.5	10	41.7
Board-directed elections	0	—	0	—	0	—	0	—

[1] See Glossary of terms for definitions.
[2] More than 1 rerun election was conducted in 10 cases; however, only the final election is included in this table.

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1997

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)[1]					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
		Number	Percent of total	Number	Percent of total		Resulting in deauthorization		Resulting in continued authorization				Number	Percent of total eligible
							Number	Percent of total	Number	Percent of total				
Total	37	14	37.8	23	62.2	2,739	542	19.8	2,197	80.2	1,864	68.1	387	14.1
AFL–CIO unions	34	14	41.2	20	58.8	2,014	542	26.9	1,472	73.1	1,503	74.6	387	19.2
Other national unions	1	0	—	1	100.0	8	0	—	8	100.0	4	50.0	0	—
Other local unions	2	0	—	2	100.0	717	0	—	717	100.0	357	49.8	0	—

[1] Sec. 8(a)(3) of the Act requires that to revoke a union-shop agreement a majority of the employees eligible to vote must vote in favor of deauthorization.

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Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1997[1]

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL–CIO unions	Other national unions	Other local unions	
	A. All representation elections												
AFL–CIO	3,066	46.3	1,420	1,420	—	—	1,646	196,733	79,136	79,136	—	—	117,597
Other national unions	90	64.4	58	—	58	—	32	9,188	5,959	—	5,959	—	3,229
Other local unions	220	53.2	117	—	—	117	103	13,054	5,686	—	—	5,686	7,368
1-union elections	3,376	47.2	1,595	1,420	58	117	1,781	218,975	90,781	79,136	5,959	5,686	128,194
AFL–CIO v. AFL–CIO	35	62.9	22	22	—	—	13	5,811	2,495	2,495	—	—	3,316
AFL–CIO v. National	10	100.0	10	5	5	—	0	1,080	1,080	390	690	—	0
AFL–CIO v. Local	38	81.6	31	19	—	12	7	7,733	5,116	2,519	—	2,597	2,617
National v. Local	8	75.0	6	—	3	3	2	1,193	950	—	117	833	243
Local v. Local	10	100.0	10	—	—	10	0	908	908	—	—	908	0
2-union elections	101	78.2	79	46	8	25	22	16,725	10,549	5,404	807	4,338	6,176
AFL–CIO v. AFL–CIO v. AFL–CIO	1	100.0	1	1	—	—	0	85	85	85	—	—	0
AFL–CIO v. AFL–CIO v. Local	1	100.0	1	1	—	0	0	81	81	81	—	0	0
AFL–CIO v. National v. Local	1	100.0	1	1	0	0	0	150	150	150	0	0	0
3 (or more)-union elections	3	100.0	3	3	0	0	0	316	316	316	0	0	0
Total representation elections	3,480	48.2	1,677	1,469	66	142	1,803	236,016	101,646	84,856	6,766	10,024	134,370
	B. Elections in RC cases												
AFL–CIO	2,656	48.6	1,290	1,290	—	—	1,366	178,989	70,610	70,610	—	—	108,379
Other national unions	81	66.7	54	—	54	—	27	8,601	5,719	—	5,719	—	2,882
Other local unions	196	56.6	111	—	—	111	85	11,792	5,319	—	—	5,319	6,473
1-union elections	2,933	49.6	1,455	1,290	54	111	1,478	199,382	81,648	70,610	5,719	5,319	117,734
AFL–CIO v. AFL–CIO	32	65.6	21	21	—	—	11	5,627	2,323	2,323	—	—	3,304
AFL–CIO v. National	10	100.0	10	5	5	—	0	1,080	1,080	390	690	—	0

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1997[1]—Continued

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL–CIO unions	Other national unions	Other local unions	
AFL–CIO v. Local	35	85.7	30	18	—	12	5	7,168	4,895	2,298	—	2,597	2,273
National v. Local	8	75.0	6	—	3	3	2	1,193	950	—	117	833	243
Local v. Local	9	100.0	9	—	—	9	0	881	881	—	—	881	0
2-union elections	94	80.9	76	44	8	24	18	15,949	10,129	5,011	807	4,311	5,820
AFL–CIO v. AFL–CIO v. Local	1	100.0	1	1	—	0	0	81	81	81	—	0	0
AFL–CIO v. National v. Local	1	100.0	1	1	0	0	0	150	150	150	0	0	0
3 (or more)-union elections	2	100.0	2	2	0	0	0	231	231	231	0	0	0
Total RC elections	3,029	50.6	1,533	1,336	62	135	1,496	215,562	92,008	75,852	6,526	9,630	123,554
C. Elections in RM cases													
AFL–CIO	40	37.5	15	15	—	—	25	1,774	1,065	1,065	—	—	709
Other National unions	1	100.0	1	—	1	—	0	40	40	—	40	—	0
Other local unions	1	0.0	0	—	—	0	1	28	0	—	—	0	28
1-union elections	42	38.1	16	15	1	0	26	1,842	1,105	1,065	40	0	737
AFL–CIO v. AFL–CIO	3	33.3	1	1	—	—	2	184	172	172	—	—	12
AFL–CIO v. Local	1	0.0	0	0	—	0	1	11	0	0	—	0	11
2-union elections	4	25.0	1	1	0	0	3	195	172	172	0	0	23
Total RM elections	46	37.0	17	16	1	0	29	2,037	1,277	1,237	40	0	760
D. Elections in RD cases													
AFL–CIO	370	31.1	115	115	—	—	255	15,970	7,461	7,461	—	—	8,509
Other national unions	8	37.5	3	—	3	—	5	547	200	—	200	—	347
Other local unions	23	26.1	6	—	—	6	17	1,234	367	—	—	367	867

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1997[1]—Continued

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL-CIO unions	Other national unions	Other local unions	
1-union elections	401	30.9	124	115	3	6	277	17,751	8,028	7,461	200	367	9,723
AFL-CIO v. Local	2	50.0	1	1	—	0	1	554	221	221	—	0	333
Local v. Local	1	100.0	1	—	—	1	0	27	27	—	—	27	0
2-union elections	3	66.7	2	1	0	1	1	581	248	221	0	27	333
AFL-CIO v. AFL-CIO v. AFL-CIO	1	100.0	1	1	—	—	0	85	85	85	—	—	0
3-union elections	1	100.0	1	1	0	0	0	85	85	85	0	0	0
Total RD elections	405	31.4	127	117	3	7	278	18,417	8,361	7,767	200	394	10,056

[1] See Glossary of terms for definitions.
[2] Includes each unit in which a choice regarding collective-bargaining agent was made; for example, there may have been more than one election in a single case, or several cases may have been involved in one election unit.

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1997[1]

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL-CIO unions	Other national unions	Other local unions		Total	AFL-CIO unions	Other national unions	Other local unions	
	A. All representation elections										
AFL-CIO	173,095	44,787	44,787	—	—	23,201	34,952	34,952	—	—	70,155
Other national unions	8,131	3,382	—	3,382	—	1,383	962	—	962	—	1,804
Other local unions	10,579	3,385	—	—	3,385	1,209	1,975	—	—	1,975	4,010
1-union elections	191,805	51,554	44,787	3,382	3,385	26,393	37,889	34,952	962	1,975	75,969
AFL-CIO v. AFL-CIO	4,578	1,467	1,467	—	—	153	1,059	1,059	—	—	1,899
AFL-CIO v. National	924	903	477	426	—	21	0	0	0	—	0
AFL-CIO v. Local	6,282	3,767	1,973	—	1,794	184	665	495	—	170	1,666
National v. Local	728	480	—	189	291	19	98	—	52	46	131
Local v. Local	566	536	—	—	536	30	0	—	—	0	0
2-union elections	13,078	7,153	3,917	615	2,621	407	1,822	1,554	52	216	3,696
AFL-CIO v. AFL-CIO v. AFL-CIO	81	79	79	—	—	2	0	0	—	—	0
AFL-CIO v. AFL-CIO v. Local	79	79	77	—	2	0	0	0	—	0	0
AFL-CIO v. National v. Local	132	132	85	43	4	0	0	0	0	0	0
3 (or more)-union elections	292	290	241	43	6	2	0	0	0	0	0
Total representation elections	205,175	58,997	48,945	4,040	6,012	26,802	39,711	36,506	1,014	2,191	79,665
	B. Elections in RC cases										
AFL-CIO	157,491	39,842	39,842	—	—	20,498	32,407	32,407	—	—	64,744
Other national unions	7,639	3,230	—	3,230	—	1,898	886	—	886	—	1,625
Other local unions	9,532	3,177	—	—	3,177	1,117	1,788	—	—	1,788	3,450
1-union elections	174,662	46,249	39,842	3,230	3,177	23,513	35,081	32,407	886	1,788	69,819
AFL-CIO v. AFL-CIO	4,439	1,333	1,333	—	—	152	1,059	1,059	—	—	1,895
AFL-CIO v. National	924	903	477	426	—	21	0	0	0	—	0

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Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1997[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL-CIO unions	Other national unions	Other local unions		Total	AFL-CIO unions	Other national unions	Other local unions	
AFL-CIO v. Local	5,784	3,614	1,828	—	1,786	149	568	401	—	167	1,453
National v. Local	728	480	—	189	291	19	98	—	52	46	131
Local v. Local	542	512	—	—	512	30	0	—	—	0	0
2-union elections	12,417	6,842	3,638	615	2,589	371	1,725	1,460	52	213	3,479
AFL-CIO v. AFL-CIO v. Local	79	79	77	—	2	0	0	0	—	0	0
AFL-CIO v. National v. Local	132	132	85	43	4	0	0	0	0	0	0
3 (or more)-union elections	211	211	162	43	6	0	0	0	0	0	0
Total RC elections	187,290	53,302	43,642	3,888	5,772	23,884	36,806	33,867	938	2,001	73,298
	C. Elections in RM cases										
AFL-CIO	1,510	627	627	—	—	347	144	144	—	—	392
Other national unions	37	23	—	23	—	14	0	—	0	—	0
Other local unions	23	0	—	—	0	0	4	—	—	4	19
1-union elections	1,570	650	627	23	0	361	148	144	0	4	411
AFL-CIO v. AFL-CIO	139	134	134	—	—	1	0	0	—	—	4
AFL-CIO v. Local	9	0	0	—	0	0	4	4	—	0	5
2-union elections	148	134	134	0	0	1	4	4	0	0	9
Total RM elections	1,718	784	761	23	0	362	152	148	0	4	420
	D. Elections in RD cases										
AFL-CIO	14,094	4,318	4,318	—	—	2,356	2,401	2,401	—	—	5,019
Other national unions	455	129	—	129	—	71	76	—	76	—	179
Other local unions	1,024	208	—	—	208	92	183	—	—	183	541
1-union elections	15,573	4,655	4,318	129	208	2,519	2,660	2,401	76	183	5,739

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Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1997[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL-CIO unions	Other national unions	Other local unions		Total	AFL-CIO unions	Other national unions	Other local unions	
AFL-CIO v. Local	489	153	145	—	8	35	93	90	—	3	208
Local v. Local	24	24	—	—	24	0	0	—	—	0	0
2-union elections	513	177	145	0	32	35	93	90	0	3	208
AFL-CIO v. AFL-CIO v. AFL-CIO	81	79	79	—	—	2	0	0	—	—	0
3-union elections	81	79	79	0	0	2	0	0	0	0	0
Total RD elections	16,167	4,911	4,542	129	240	2,556	2,753	2,491	76	186	5,947

[1] See Glossary of terms for definitions.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1997

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Maine	12	5	3	2	0	7	1,834	1,745	816	701	115	0	929	538
New Hampshire	3	1	0	1	0	2	135	135	48	11	37	0	87	65
Vermont	6	2	2	0	0	4	203	210	84	84	0	0	116	75
Massachusetts	89	42	35	3	4	47	5,486	5,262	2,570	2,195	189	186	2,692	1,944
Rhode Island	26	15	13	2	0	11	1,923	1,847	882	781	101	0	965	637
Connecticut	54	31	29	0	2	23	2,061	1,812	1,098	1,059	0	39	714	1,113
New England	190	96	82	8	6	94	11,642	11,001	5,498	4,831	442	225	5,503	4,372
New York	298	178	142	11	25	120	18,470	15,012	8,023	6,245	483	1,295	6,989	10,750
New Jersey	171	72	62	1	9	99	11,143	9,364	4,078	3,605	170	303	5,286	4,181
Pennsylvania	232	109	87	8	14	123	20,253	17,709	7,809	5,951	191	1,667	9,900	6,498
Middle Atlantic	701	359	291	20	48	342	49,866	42,085	19,910	15,801	844	3,265	22,175	21,429
Ohio	209	80	78	0	2	129	16,074	14,746	6,528	6,427	11	90	8,218	4,047
Indiana	95	33	31	2	0	62	7,182	6,644	2,938	2,810	107	21	3,706	2,100
Illinois	269	134	119	4	11	135	13,921	12,127	6,609	5,381	496	732	5,518	6,050
Michigan	189	100	97	1	2	89	12,095	10,441	5,319	5,006	13	208	5,122	7,243
Wisconsin	103	54	46	1	7	49	6,398	5,719	2,920	2,337	340	243	2,799	3,466
East North Central	865	401	371	8	22	464	55,670	49,677	24,314	22,051	967	1,294	25,363	22,906
Iowa	29	12	10	2	0	17	1,770	1,615	794	683	111	0	821	892
Minnesota	88	39	37	1	1	49	5,190	4,370	2,079	1,832	52	195	2,291	2,258
Missouri	126	55	50	3	2	71	6,429	5,606	2,472	2,255	48	169	3,134	2,366
North Dakota	6	2	2	0	0	4	685	582	241	135	106	0	341	92
South Dakota	6	2	2	0	0	4	458	405	168	168	0	0	237	16
Nebraska	9	4	4	0	0	5	283	258	120	120	0	0	138	83
Kansas	25	10	9	1	0	15	1,633	1,367	603	565	25	13	764	625
West North Central	289	124	114	7	3	165	16,448	14,303	6,477	5,758	342	377	7,726	6,232

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1997—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Delaware	21	10	10	0	0	11	784	698	241	233	0	8	457	211
Maryland	67	30	25	0	5	37	4,225	3,455	1,579	1,155	172	252	1,876	1,267
District of Columbia	9	6	4	0	2	3	244	291	149	74	0	75	42	186
Virginia	31	13	8	2	3	18	2,987	2,709	1,127	840	150	137	1,582	697
West Virginia	33	13	10	3	0	20	1,808	1,647	782	497	285	0	865	621
North Carolina	22	12	12	0	0	10	2,039	1,877	875	875	0	0	1,002	1,009
South Carolina	12	6	6	0	0	6	1,306	1,195	578	578	0	0	617	536
Georgia	38	18	16	0	2	20	2,475	2,160	1,031	1,003	0	28	1,129	1,383
Florida	91	51	46	0	5	40	6,648	6,435	3,290	3,135	1	154	3,145	3,543
South Atlantic	324	159	137	5	17	165	22,516	20,367	9,652	8,390	608	654	10,715	9,453
Kentucky	59	30	28	2	0	29	5,108	4,698	2,326	1,997	329	0	2,372	2,860
Tennessee	45	14	13	0	1	31	4,476	4,077	1,714	1,710	0	4	2,363	1,297
Alabama	30	8	6	1	1	22	1,801	1,692	720	622	79	19	972	441
Mississippi	22	9	9	0	0	13	2,223	2,033	969	969	0	0	1,064	1,035
East South Central	156	61	56	3	2	95	13,608	12,500	5,729	5,298	408	23	6,771	5,633
Arkansas	16	7	6	1	0	9	1,763	1,617	786	771	15	0	831	490
Louisiana	38	11	10	1	0	27	1,888	1,601	655	545	5	105	946	532
Oklahoma	20	9	9	0	0	11	1,396	1,311	580	580	0	0	731	506
Texas	70	37	32	0	5	33	5,186	4,143	2,076	1,984	0	92	2,067	2,949
West South Central	144	64	57	2	5	80	10,233	8,672	4,097	3,880	20	197	4,575	4,477
Montana	21	8	7	1	0	13	501	396	187	170	17	0	209	216
Idaho	15	10	8	1	1	5	520	364	248	169	76	3	116	334
Wyoming	5	2	2	0	0	3	292	260	111	111	0	0	149	63
Colorado	25	11	8	2	1	14	1,135	1,023	514	419	86	9	509	597
New Mexico	15	4	4	0	0	11	820	744	353	353	0	0	391	284
Arizona	22	14	12	0	2	8	3,424	2,960	1,159	1,152	0	7	1,801	1,047
Utah	15	8	8	0	0	7	459	411	223	223	0	0	188	233
Nevada	34	17	16	1	0	17	1,420	1,174	563	392	150	21	611	762

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1997—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Mountain	152	74	65	5	4	78	8,571	7,332	3,358	2,989	329	40	3,974	3,536
Washington	127	86	81	1	4	41	6,795	5,939	3,669	3,125	5	539	2,270	4,868
Oregon	47	21	17	3	1	26	2,134	1,820	1,003	752	125	126	817	1,274
California	356	174	164	3	7	182	32,213	26,344	12,677	11,133	932	612	13,667	15,298
Alaska	34	15	14	1	0	19	1,595	1,289	627	595	32	0	662	823
Hawaii	28	10	8	0	2	18	735	646	270	250	0	20	376	285
Guam	1	0	0	0	0	1	40	29	0	0	0	0	29	0
Pacific	593	306	284	8	14	287	43,312	36,067	18,246	15,855	1,094	1,297	17,821	22,548
Puerto Rico	57	27	7	0	20	30	3,562	2,946	1,248	419	0	829	1,698	803
Virgin Islands	9	6	5	0	1	3	388	325	179	177	0	2	146	257
Outlying Areas	66	33	12	0	21	33	3,950	3,271	1,427	596	0	831	1,844	1,060
Total, all States and areas	3,480	1,677	1,469	66	142	1,803	236,016	205,175	98,708	85,451	5,054	8,203	106,467	101,646

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1997

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Maine	10	4	3	1	0	6	1,764	1,675	777	701	76	0	898	475
New Hampshire	3	1	0	1	0	2	135	135	48	11	37	0	87	65
Vermont	5	2	2	0	0	3	197	194	84	84	0	0	110	75
Massachusetts	76	37	31	2	4	39	4,761	4,554	2,199	1,882	155	162	2,355	1,490
Rhode Island	24	14	12	2	0	10	1,806	1,734	814	713	101	0	920	532
Connecticut	52	31	29	0	2	21	2,048	1,799	1,098	1,059	0	39	701	1,113
New England	170	89	77	6	6	81	10,711	10,091	5,020	4,450	369	201	5,071	3,750
New York	276	170	136	11	23	106	17,751	14,429	7,757	6,070	482	1,205	6,672	10,431
New Jersey	154	66	57	1	8	88	10,318	8,691	3,823	3,425	164	234	4,868	3,898
Pennsylvania	209	101	80	8	13	108	19,313	16,844	7,444	5,653	190	1,601	9,400	6,139
Middle Atlantic	639	337	273	20	44	302	47,382	39,964	19,024	15,148	836	3,040	20,940	20,468
Ohio	188	73	72	0	1	115	15,238	13,966	6,193	6,117	11	65	7,773	3,770
Indiana	82	28	26	2	0	54	6,637	6,137	2,646	2,518	107	21	3,491	1,656
Illinois	231	123	109	4	10	108	12,384	10,806	5,917	4,784	428	705	4,889	5,329
Michigan	160	92	89	1	2	68	10,334	8,961	4,706	4,522	13	171	4,255	6,810
Wisconsin	90	50	42	1	7	40	5,989	5,342	2,711	2,128	340	243	2,631	3,227
East North Central	751	366	338	8	20	385	50,582	45,212	22,173	20,069	899	1,205	23,039	20,792
Iowa	27	11	9	2	0	16	1,682	1,533	752	641	111	0	781	882
Minnesota	72	35	33	1	1	37	4,666	3,908	1,883	1,636	52	195	2,025	2,096
Missouri	110	52	47	3	2	58	5,859	5,091	2,171	1,954	48	169	2,920	1,847
North Dakota	6	2	2	0	0	4	685	582	241	135	106	0	341	92
South Dakota	6	2	2	0	0	4	458	405	168	168	0	0	237	16
Nebraska	8	4	4	0	0	4	264	239	114	114	0	0	125	83
Kansas	22	10	9	1	0	12	1,580	1,314	590	552	25	13	724	625
West North Central	251	116	106	7	3	135	15,194	13,072	5,919	5,200	342	377	7,153	5,641

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1997—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Delaware	21	10	10	0	0	11	784	698	241	233	0	8	457	211
Maryland	62	27	22	0	5	35	3,965	3,275	1,460	1,036	172	252	1,815	1,065
District of Columbia	8	6	4	0	2	2	204	157	140	65	0	75	17	186
Virginia	30	12	7	2	3	18	2,910	2,639	1,087	800	150	137	1,552	620
West Virginia	23	11	8	3	0	12	1,465	1,328	640	355	285	0	688	538
North Carolina	21	12	12	0	0	9	2,015	1,857	867	867	0	0	990	1,009
South Carolina	12	6	6	0	0	6	1,306	1,195	578	578	0	0	617	536
Georgia	33	16	14	0	2	17	1,909	1,661	742	714	0	28	919	902
Florida	83	48	43	0	5	35	6,165	3,141	2,986	1	1	154	3,024	3,358
South Atlantic	293	148	126	5	17	145	20,933	18,975	8,896	7,634	608	654	10,079	8,425
Kentucky	54	28	26	2	0	26	4,770	4,369	2,180	1,851	329	0	2,189	2,667
Tennessee	39	13	12	0	1	26	3,970	3,672	1,578	1,574	0	4	2,094	1,288
Alabama	24	6	4	1	1	18	1,382	1,321	557	459	79	19	764	323
Mississippi	22	9	9	0	0	13	2,223	2,033	969	969	0	0	1,064	1,035
East South Central	139	56	51	3	2	83	12,345	11,395	5,284	4,853	408	23	6,111	5,313
Arkansas	13	5	4	1	0	8	1,581	1,457	679	664	15	0	778	364
Louisiana	30	8	7	1	0	22	1,624	1,363	553	443	5	105	810	458
Oklahoma	17	8	8	0	0	9	1,368	1,284	569	569	0	0	715	491
Texas	57	34	29	0	5	23	4,484	3,502	1,837	1,745	0	92	1,665	2,767
West South Central	117	55	48	2	5	62	9,057	7,606	3,638	3,421	20	197	3,968	4,080
Montana	15	8	7	1	0	7	299	232	120	103	17	0	112	216
Idaho	13	10	8	1	1	3	482	331	235	156	76	3	96	334
Wyoming	5	2	2	0	0	3	292	260	111	111	0	0	149	63
Colorado	22	10	7	2	1	12	927	823	418	323	86	9	405	491
New Mexico	12	2	2	0	0	10	643	583	269	269	0	0	314	198
Arizona	22	14	12	0	2	8	3,424	2,960	1,159	1,152	0	7	1,801	1,047
Utah	14	7	7	0	0	7	396	348	186	186	0	0	162	170
Nevada	33	17	16	1	0	16	1,345	1,111	542	392	150	0	569	762

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1997—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Mountain	136	70	61	5	4	66	7,808	6,648	3,040	2,692	329	19	3,608	3,281
Washington	113	79	74	1	4	34	5,793	5,034	3,163	2,619	5	539	1,871	4,031
Oregon	39	18	15	2	1	21	1,960	1,657	917	722	69	126	740	1,150
California	304	158	149	3	6	146	29,663	24,243	11,680	10,203	932	545	12,563	14,186
Alaska	32	15	14	1	0	17	1,543	1,256	622	590	32	0	634	823
Hawaii	25	10	8	0	2	15	653	567	244	224	0	20	323	285
Guam	1	0	0	0	0	1	40	29	0	0	0	0	29	0
Pacific	514	280	260	7	13	234	39,652	32,786	16,626	14,358	1,038	1,230	16,160	20,475
Puerto Rico	56	27	7	0	20	29	3,547	2,934	1,245	416	0	829	1,689	803
Virgin Islands	9	6	5	0	1	3	388	325	179	177	0	2	146	257
Outlying Areas	65	33	12	0	21	32	3,935	3,259	1,424	593	0	831	1,835	1,060
Total, all States and area	3,075	1,550	1,352	63	135	1,525	217,599	189,009	91,044	78,418	4,849	7,777	97,964	93,285

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

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Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1997

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Maine	2	1	0	1	0	1	70	70	39	0	39	0	31	63
New Hampshire	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Vermont	1	0	0	0	0	1	6	6	0	0	0	0	6	0
Massachusetts	13	5	4	1	0	8	725	708	371	313	34	24	337	454
Rhode Island	2	1	1	0	0	1	117	113	68	68	0	0	45	105
Connecticut	2	0	0	0	0	2	13	13	0	0	0	0	13	0
New England	20	7	5	2	0	13	931	910	478	381	73	24	432	622
New York	22	8	6	0	2	14	719	583	266	175	1	90	317	319
New Jersey	17	6	5	0	1	11	825	673	255	180	6	69	418	283
Pennsylvania	23	8	7	0	1	15	940	865	365	298	1	66	500	359
Middle Atlantic	62	22	18	0	4	40	2,484	2,121	886	653	8	225	1,235	961
Ohio	21	7	6	0	1	14	836	780	335	310	0	25	445	277
Indiana	13	5	5	0	0	8	545	507	292	292	0	0	215	444
Illinois	38	11	10	0	1	27	1,537	1,321	692	597	68	27	629	721
Michigan	29	8	8	0	0	21	1,761	1,480	613	576	0	37	867	433
Wisconsin	13	4	4	0	0	9	409	377	209	209	0	0	168	239
East North Central	114	35	33	0	2	79	5,088	4,465	2,141	1,984	68	89	2,324	2,114
Iowa	2	1	1	0	0	1	88	82	42	42	0	0	40	10
Minnesota	16	4	4	0	0	12	524	462	196	196	0	0	266	162
Missouri	16	3	3	0	0	13	570	515	301	301	0	0	214	419
North Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1997—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
South Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nebraska	1	0	0	0	0	1	19	19	6	6	0	0	13	0
Kansas	3	0	0	0	0	3	53	53	13	13	0	0	40	0
West North Central	38	8	8	0	0	30	1,254	1,131	558	538	0	0	573	591
Delaware	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Maryland	5	3	3	0	0	2	260	180	119	119	0	0	61	202
District of Columbia	1	0	0	0	0	1	40	34	9	9	0	0	25	0
Virginia	1	1	1	0	0	0	77	70	40	40	0	0	30	77
West Virginia	10	2	2	0	0	8	343	319	142	142	0	0	177	83
North Carolina	1	0	0	0	0	1	24	20	8	8	0	0	12	0
South Carolina	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Georgia	5	2	2	0	0	3	566	499	289	289	0	0	210	481
Florida	8	3	3	0	0	5	273	270	149	149	0	0	121	185
South Atlantic	31	11	11	0	0	20	1,583	1,392	756	756	0	0	636	1,028
Kentucky	5	2	2	0	0	3	338	329	146	146	0	0	183	193
Tennessee	6	1	1	0	0	5	506	405	136	136	0	0	269	9
Alabama	6	2	2	0	0	4	419	371	163	163	0	0	208	118
Mississippi	0	0	0	0	0	0	0	0	0	0	0	0	0	0
East South Central	17	5	5	0	0	12	1,263	1,105	445	445	0	0	660	320
Arkansas	3	2	2	0	0	1	182	160	107	107	0	0	53	126
Louisiana	8	3	3	0	0	5	264	238	102	102	0	0	136	74
Oklahoma	3	1	1	0	0	2	28	27	11	11	0	0	16	15
Texas	13	3	3	0	0	10	702	641	239	239	0	0	402	182
West South Central	27	9	9	0	0	18	1,176	1,066	459	459	0	0	607	397
Montana	6	0	0	0	0	6	202	164	67	67	0	0	97	0
Idaho	2	0	0	0	0	2	38	33	13	13	0	0	20	0
Wyoming	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Colorado	3	1	1	0	0	2	208	200	96	96	0	0	104	106

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1997—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
New Mexico	3	2	2	0	0	1	177	161	84	84	0	0	77	86
Arizona	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Utah	1	1	1	0	0	0	63	63	37	37	0	0	26	63
Nevada	1	0	0	0	0	1	75	63	21	0	0	21	42	0
Mountain	16	4	4	0	0	12	763	684	318	297	0	21	366	255
Washington	14	7	7	0	0	7	1,002	905	506	506	0	0	399	837
Oregon	8	3	2	1	0	5	174	163	86	30	56	0	77	124
California	52	16	15	0	1	36	2,550	2,101	997	930	0	67	1,104	1,112
Alaska	2	0	0	0	0	2	52	33	5	5	0	0	28	0
Hawaii	3	0	0	0	0	3	82	79	26	26	0	0	53	0
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	79	26	24	1	1	53	3,860	3,281	1,620	1,497	56	67	1,661	2,073
Puerto Rico	1	0	0	0	0	1	15	12	3	3	0	0	9	0
Virgin Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Outlying Areas	1	0	0	0	0	1	15	12	3	3	0	0	9	0
Total, all States and areas	405	127	117	3	7	278	18,417	16,167	7,664	7,033	205	426	8,503	8,361

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

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Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1997

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Food and kindred products	155	63	39	0	4	92	15,825	14,317	6,002	5,540	0	462	8,315	5,270
Tobacco manufacturers	1	1	1	0	0	0	9	9	7	7	0	0	2	9
Textile mill products	17	10	8	1	1	7	1,318	1,201	582	467	39	76	619	424
Apparel and other finished products made from fabric and similar materials	14	2	1	0	1	12	1,238	1,129	391	353	0	38	738	88
Lumber and wood products (except furniture)	42	18	18	0	0	24	2,925	2,659	1,381	1,292	0	89	1,278	1,576
Furniture and fixtures	22	9	7	2	0	13	1,287	1,219	539	472	67	0	680	560
Paper and allied products	38	11	7	3	1	27	4,697	4,335	1,907	1,664	152	91	2,428	584
Printing, publishing, and allied products	60	24	23	0	1	36	3,486	3,221	1,181	1,073	62	46	2,040	709
Chemicals and allied products	53	17	17	0	0	36	3,658	3,391	1,555	1,424	58	73	1,836	976
Petroleum refining and related industries	17	11	11	0	0	6	328	300	142	142	0	0	158	145
Rubber and miscellaneous plastic products	43	12	11	1	0	31	3,541	3,282	1,192	1,107	230	55	1,890	768
Leather and leather products	1	0	0	0	0	1	336	289	85	85	0	0	204	0
Stone, clay, glass, and concrete products	60	17	16	0	1	43	3,905	3,345	1,691	1,341	135	215	1,654	1,534
Primary metal industries	61	26	22	1	3	35	7,902	7,342	3,745	3,179	79	487	3,597	3,489
Fabricated metal products (except machinery and transportation equipment)	97	36	36	0	0	61	6,512	5,918	2,732	2,730	0	2	3,186	2,514
Machinery (except electrical)	90	28	25	2	1	62	6,695	6,256	2,569	2,424	121	24	3,687	2,217
Electrical and electronic machinery, equipment, and supplies	38	17	16	0	1	21	5,171	4,876	2,208	2,131	63	14	2,668	1,423
Aircraft and parts	78	41	38	0	3	37	8,245	7,475	3,368	3,159	0	209	4,107	3,508
Ship and boat building and repairing	8	6	6	0	0	2	401	367	198	198	0	0	169	248
Automotive and other transportation equipment	11	4	4	0	0	7	3,337	2,969	1,313	1,117	0	196	1,656	693
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks	8	4	3	0	1	4	356	328	233	91	0	142	95	214
Miscellaneous manufacturing industries	56	28	21	1	6	28	3,661	3,182	1,500	1,156	80	264	1,682	1,582
Manufacturing	970	385	350	11	24	585	84,833	77,410	34,721	31,152	1,086	2,483	42,689	28,531

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1997—Continued

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Metal mining	4	1	1	0	0	3	342	315	139	139	0	0	176	65
Coal mining	7	2	1	1	0	5	2,822	2,429	863	572	291	0	1,566	493
Oil and gas extraction	5	4	4	0	0	1	43	42	31	31	0	0	11	31
Mining and quarrying of nonmetallic minerals (except fuels)	6	2	1	1	0	4	104	78	28	14	10	4	50	39
Mining	22	9	7	2	0	13	3,311	2,864	1,061	756	301	4	1,803	618
Construction	279	127	123	2	2	152	8,769	6,170	2,972	2,735	109	128	3,198	4,081
Wholesale trade	183	76	69	5	2	107	10,423	9,275	4,061	3,878	122	61	5,214	2,990
Retail trade	266	118	111	2	5	148	11,785	10,384	4,962	4,616	179	167	5,422	4,736
Finance, insurance, and real estate	62	35	31	2	2	27	974	864	470	404	10	56	394	453
U.S. Postal Service	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Local and suburban transit and interurban highway passenger transportation	152	81	76	2	3	71	12,838	10,832	6,044	5,274	393	377	4,788	7,775
Motor freight transportation and warehousing	249	97	92	2	3	152	10,067	8,972	3,856	3,653	124	79	5,116	2,824
Water transportation	13	10	9	0	1	3	254	224	135	124	0	11	89	168
Other transportation	63	46	37	0	9	17	3,247	2,876	1,480	1,449	0	31	1,396	1,430
Communication	64	22	22	0	0	42	3,587	3,300	1,390	1,384	0	6	1,910	756
Electric, gas, and sanitary services	116	61	58	1	2	55	5,035	4,618	2,151	2,058	84	9	2,467	1,755
Transportation, communication, and other utilities	657	317	294	5	18	340	35,028	30,822	15,056	13,942	601	513	15,766	14,708
Hotels, rooming houses, camps, and other lodging places	59	20	16	0	4	39	4,276	3,651	1,247	1,030	0	217	2,404	681
Personal services	41	25	24	0	1	16	1,411	1,245	713	672	0	41	532	940
Automotive repair, services, and garages	79	34	32	0	2	45	2,209	1,951	907	869	0	38	1,024	700
Motion pictures	11	6	5	0	1	5	519	380	195	151	1	43	185	227
Amusement and recreation services (except motion pictures)	38	22	21	0	1	16	2,596	2,184	1,088	1,029	0	59	1,096	933
Health services	407	258	204	23	31	149	49,286	41,644	22,303	17,558	2,099	2,546	19,441	30,568
Educational services	22	16	9	1	6	6	1,170	979	612	286	68	258	367	927
Membership organizations	49	27	23	0	4	22	2,219	1,932	920	818	36	66	1,012	817
Business services	218	127	84	11	32	91	9,913	7,980	4,232	2,470	378	1,384	3,748	4,820

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1997—Continued

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Miscellaneous repair services	10	4	4	0	0	6	487	435	153	121	0	32	282	59
Museums, art galleries, botanical and zoological gardens	5	2	1	0	1	3	168	139	61	51	0	10	78	42
Legal services	4	2	2	0	0	2	139	134	100	98	0	2	34	100
Social services	56	39	37	0	2	17	4,879	3,432	2,106	2,009	15	82	1,326	3,598
Miscellaneous services	17	12	12	0	0	5	777	578	448	448	0	0	130	693
Services	1,016	594	474	35	85	422	80,049	66,644	34,985	27,610	2,597	4,778	31,659	45,105
Public administration	25	16	10	2	4	9	844	742	420	358	49	13	322	424
Total, all industrial groups	3,480	1,677	1,469	66	142	1,803	236,016	205,175	98,708	85,451	5,054	8,203	106,467	101,646

[1]Source: Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C., 1972.

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 1997[1]

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL–CIO unions		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent of size class	Number	Percent by size class
	A. Certification elections (RC and RM)											
Total RC and RM elections	217,599	3,075	100.0	—	1,352	100.0	63	100.0	135	100.0	1,525	100.0
Under 10	3,437	613	19.9	19.9	355	26.3	7	11.1	33	24.4	218	14.3
10 to 19	8,419	594	19.3	39.2	280	20.7	8	12.7	15	11.1	291	19.1
20 to 29	9,804	402	13.1	52.3	172	12.7	9	14.3	19	14.2	202	13.2
30 to 39	8,179	237	7.7	60.0	92	6.8	5	7.9	15	11.1	125	8.2
40 to 49	8,291	188	6.1	66.1	81	6.0	4	6.3	10	7.4	93	6.1
50 to 59	8,243	152	4.9	71.0	58	4.3	4	6.3	11	8.1	79	5.2
60 to 69	7,675	120	3.9	74.9	52	3.8	5	7.9	1	0.7	62	4.1
70 to 79	5,837	79	2.6	77.5	28	2.1	1	1.6	4	3.0	46	3.0
80 to 89	8,183	97	3.2	80.7	44	3.3	2	3.2	6	4.4	45	3.0
90 to 99	5,214	55	1.8	82.5	13	1.0	1	1.6	2	1.5	39	2.6
100 to 109	6,359	61	2.0	84.5	27	2.0	1	1.6	1	0.7	32	2.1
110 to 119	5,851	51	1.7	86.2	13	1.0	4	6.3	2	1.5	32	2.1
120 to 129	5,608	45	1.5	87.7	11	0.8	1	1.6	0	—	33	2.2
130 to 139	5,090	38	1.2	88.9	17	1.3	0	—	2	1.5	19	1.2
140 to 149	4,749	33	1.1	90.0	12	0.9	1	1.6	2	1.5	18	1.2
150 to 159	4,273	28	0.9	90.9	10	0.7	2	3.2	1	0.7	15	1.0
160 to 169	2,943	18	0.6	91.5	4	0.3	2	3.2	0	—	12	0.8
170 to 179	3,153	18	0.6	92.1	5	0.4	0	—	0	—	13	0.9
180 to 189	2,751	15	0.5	92.6	1	0.1	1	1.6	0	—	13	0.9
190 to 199	3,707	19	0.6	93.2	8	0.5	0	—	1	0.7	10	0.7
200 to 299	19,720	84	2.7	95.9	26	1.9	1	1.6	4	3.0	53	3.5
300 to 399	14,033	40	1.3	97.2	15	1.1	1	1.6	0	—	24	1.6
400 to 499	10,959	24	0.8	98.0	8	0.5	1	1.6	0	—	15	1.0
500 to 599	11,568	21	0.7	98.7	5	0.4	1	1.6	2	1.5	13	0.9
600 to 799	13,203	19	0.6	99.3	9	0.7	0	—	2	1.5	8	0.5
800 to 999	9,957	11	0.3	99.6	2	0.1	0	—	2	1.5	7	0.5
1,000 to 1,999	15,302	11	0.3	99.9	3	0.2	1	1.6	0	—	7	0.5
2,000 to 2,999	4,981	2	0.1	100.0	1	0.1	0	—	0	—	1	0.1

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 1997[1]—Continued

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL-CIO unions		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent of size class	Number	Percent by size class
	E. Decertification elections (RD)											
Total RD elections	18,417	405	100.0	—	117	100.0	3	100.0	7	100.0	278	100.0
Under 10	471	81	20.0	20.0	10	8.5	0	—	0	—	71	25.5
10 to 19	1,233	87	21.5	41.5	17	14.5	0	—	0	—	70	25.2
20 to 29	1,457	60	14.8	56.3	16	13.7	0	—	3	42.8	41	14.7
30 to 39	901	26	6.4	62.7	7	6.0	0	—	0	—	19	6.8
40 to 49	1,158	27	6.7	69.4	11	9.4	0	—	1	14.3	15	5.4
50 to 59	1,318	28	6.9	76.3	12	10.3	1	33.3	0	—	15	5.4
60 to 69	1,061	17	4.2	80.5	7	6.0	1	33.3	1	14.3	8	2.9
70 to 79	1,338	18	4.4	84.9	10	8.5	0	—	0	—	8	2.9
80 to 89	1,079	13	3.2	88.1	8	6.8	1	33.3	0	—	4	1.4
90 to 99	954	10	2.5	90.6	1	0.9	0	—	1	14.3	8	2.9
100 to 109	638	6	1.5	92.1	3	2.6	0	—	0	—	3	1.1
110 to 119	229	2	0.5	92.6	0	—	0	—	0	—	2	0.7
120 to 129	624	5	1.2	93.8	1	0.9	0	—	1	14.3	3	1.1
130 to 139	273	2	0.5	94.3	2	1.7	0	—	0	—	0	—
140 to 149	728	5	1.2	95.5	2	1.7	0	—	0	—	3	1.1
150 to 159	158	1	0.2	95.7	0	—	0	—	0	—	1	0.4
160 to 169	170	1	0.2	95.9	1	0.9	0	—	0	—	0	—
170 to 199	368	2	0.5	96.4	2	1.7	0	—	0	—	0	—
200 to 299	2,183	9	2.4	98.8	4	3.3	0	—	0	—	5	1.8
300 to 499	1,916	5	1.2	100.0	3	2.6	0	—	0	—	2	0.7

[1] See Glossary of terms for definitions.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1997[1]

Size of establishment (number of employees)	Total number of situations	Total		Type of situations																	
		Percent of all situations	Cumulative percent of all situations	CA		CB		CC		CD		CE		CG		CP		CA-CB combinations		Other C combinations	
				Number of situations	Percent by unit class	Number of situations	Percent by unit class	Number of situations	Percent by unit class	Number of situations	Percent by unit class	Number of situations	Percent by unit class	Number of situations	Percent by unit class	Number of situations	Percent by unit class	Number of situations	Percent by unit class	Number of situations	Percent by unit class
Totals	30,177	100.0	—	22,958	100.0	5,776	100.0	503	100.0	159	100.0	29	100.0	31	100.0	119	100.0	585	100.0	17	100.0
Under 10	3,113	10.3	10.3	2,380	10.4	496	8.6	118	23.5	41	25.8	4	13.8	2	6.5	44	37.0	26	4.4	2	11.8
10-19	2,690	8.9	19.2	2,186	9.5	351	6.1	64	12.7	28	17.6	4	13.8	2	6.5	16	13.4	37	6.3	2	11.8
20-29	2,327	7.7	26.9	1,875	8.2	328	5.7	56	11.1	14	8.8	2	6.9	0	—	11	9.2	36	6.2	5	29.4
30-39	1,458	4.8	31.7	1,201	5.2	191	3.3	27	5.4	10	6.3	3	10.3	1	3.2	8	6.7	17	2.9	0	—
40-49	986	3.3	35.0	818	3.6	133	2.3	15	3.0	4	2.5	0	—	0	—	5	4.2	10	1.7	1	5.9
50-59	1,792	5.9	40.9	1,375	6.0	315	5.5	57	11.3	17	10.7	0	—	0	—	4	3.4	22	3.8	2	11.8
60-69	868	2.9	43.8	723	3.2	120	2.1	9	1.8	1	0.6	1	3.4	1	3.2	1	0.8	10	1.7	0	—
70-79	725	2.4	46.2	569	2.5	129	2.2	6	1.2	5	3.1	1	3.4	1	3.2	0	—	14	2.4	0	—
80-89	580	2.0	48.2	502	2.2	71	1.2	4	0.8	4	2.5	0	—	0	—	1	.08	8	1.4	0	—
90-99	348	1.2	49.4	296	1.3	35	0.6	6	1.2	3	1.9	0	—	0	—	3	2.5	5	0.9	0	—
100-109	2,452	8.1	57.5	1,718	7.5	607	10.5	40	8.0	8	5.0	3	10.3	4	12.9	8	6.7	61	10.4	3	17.6
110-119	249	0.8	58.3	218	0.9	25	0.4	2	0.4	0	—	0	—	1	3.2	0	—	3	0.5	0	—
120-129	496	1.6	59.9	387	1.7	95	1.6	3	0.6	3	1.9	0	—	0	—	0	—	8	1.4	0	—
130-139	249	0.8	60.7	211	0.9	29	0.5	2	0.4	2	1.3	0	—	0	—	1	0.8	4	0.7	0	—
140-149	202	0.7	61.4	166	0.7	34	0.6	1	0.2	1	0.6	0	—	0	—	0	—	0	—	0	—
150-159	724	2.4	63.8	556	2.4	146	2.5	4	0.8	0	—	1	3.4	0	—	1	0.8	15	2.6	1	5.9
160-169	197	0.7	64.5	153	0.7	37	0.6	1	0.2	0	—	0	—	0	—	0	—	6	1.0	0	—
170-179	170	0.6	65.1	134	0.6	30	0.5	2	0.4	1	0.6	1	3.4	0	—	0	—	2	0.3	0	—
180-189	184	0.6	65.7	159	0.7	23	0.4	0	—	0	—	0	—	0	—	0	—	2	0.3	0	—
190-199	53	0.2	65.9	38	0.2	11	0.2	1	0.2	1	0.6	0	—	0	—	2	1.7	0	—	0	—
200-299	2,165	7.2	73.1	1,636	7.1	466	8.1	19	3.8	8	5.0	1	3.4	2	6.5	4	3.4	49	8.4	0	—
300-399	1,293	4.3	77.4	928	4.0	305	5.3	15	3.0	5	3.1	0	—	3	9.7	3	2.5	34	5.8	0	—
400-499	727	2.4	79.8	554	2.4	150	2.6	4	0.8	0	—	1	3.4	0	—	1	0.8	17	2.9	0	—
500-599	946	3.1	82.9	643	2.8	261	4.5	8	1.6	0	—	0	—	0	—	1	0.8	33	5.6	0	—
600-699	477	1.6	84.5	355	1.5	100	1.7	2	0.4	0	—	0	—	2	6.5	0	—	18	3.1	0	—
700-799	266	0.9	85.4	196	0.9	62	1.1	0	—	0	—	0	—	1	3.2	0	—	7	1.2	0	—
800-899	274	0.9	86.3	190	0.8	71	1.2	2	0.4	0	—	1	3.4	0	—	1	0.8	9	1.5	0	—
900-999	145	0.5	86.8	106	0.5	30	0.5	0	—	0	—	0	—	0	—	0	—	7	1.2	0	—
1,000-1,999	1,697	5.6	92.4	1,132	4.9	489	8.5	18	3.6	1	0.6	5	17.2	4	12.9	0	—	48	8.2	0	—
2,000-2,999	664	2.2	94.6	439	1.9	185	3.2	8	1.6	2	1.3	0	—	4	12.9	3	2.5	22	3.8	1	5.9
3,000-3,999	409	1.4	96.0	264	1.1	129	2.2	1	0.2	0	—	0	—	0	—	1	0.8	14	2.4	0	—

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Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1997[1]—Continued

Size of establishment (number of employees)	Total number of situations	Total		Type of situations															
		Percent of all situations	Cumulative percent of all situations	CA		CB		CC		CD		CE		CG		CP		CA-CB combinations		Other C combinations	
				Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
4,000–4,999	175	0.6	96.6	116	0.5	50	0.9	3	0.6	0	—	0	—	1	3.2	0	—	5	0.9	0	—
5,000–9,999	499	1.7	98.3	320	1.4	152	2.6	4	0.8	0	—	1	3.4	1	3.2	0	—	21	5.6	0	—
Over 9,999	547	1.8	100.1	410	1.8	120	2.1	1	0.2	0	—	0	—	1	3.2	0	—	15	2.6	0	—

[1] See Glossary of terms for definitions.
[2] Based on revised situation count which absorbs companion cases, cross-filing, and multiple filings as compared to situations shown in charts 1 and 2 of Chapter 1, which are based on single and multiple filings of same type of case.

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Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1997; and Cumulative Totals, Fiscal Years 1936 Through 1997

	Fiscal Year 1997									July 5, 1935–Sept. 30, 1997	
	Number of proceedings[1]					Percentages					
	Total	Vs. employers only	Vs. unions only	Vs. both employers and unions	Board dismissal[2]	Vs. employers only	Vs. unions only	Vs. both employers and unions	Board dismissal	Number	Percent
Proceedings decided by U.S. courts of appeals	203	190	13	0	1	—	—	—	—	—	—
On petitions for review and/or enforcement	166	161	5	0	1	100.0	100.0	0.0	100.0	11,092	100.0
Board orders affirmed in full	116	113	3	0	1	70.2	60.0	0.0	100.0	7,309	65.9
Board orders affirmed with modification	15	14	1	0	0	8.7	20.0	0.0	0.0	1,488	13.4
Remanded to Board	7	7	0	0	0	4.3	0.0	0.0	0.0	551	5.0
Board orders partially affirmed and partially remanded	8	8	0	0	0	5.0	0.0	0.0	0.0	236	2.1
Board orders set aside	20	19	1	0	0	11.8	20.0	0.0	0.0	1,508	13.6
On petitions for contempt	11	10	1	0	0	—	—	—	—	—	—
Total Court Orders	26	19	7	0	0	100.0	100.0	—	—	—	—
Compliance after filing of petition, before court order	10	5	5	0	0	26.3	71.4	—	—	—	—
Court orders holding respondent in contempt	6	6	0	0	0	31.6	0.0	—	—	—	—
Court orders denying petition	2	2	0	0	0	10.5	0.0	—	—	—	—
Court orders directing compliance without contempt adjudication	8	6	2	0	0	31.6	28.6	—	—	—	—
Proceedings decided by U.S. Supreme Court[3]	0	0	0	0	0	—	—	—	—	256	100.0
Board orders affirmed in full	0	0	0	0	0	—	—	—	—	155	60.5
Board orders affirmed with modification	0	0	0	0	0	—	—	—	—	18	7.0
Board orders set aside	0	0	0	0	0	—	—	—	—	45	17.6
Remanded to Board	0	0	0	0	0	—	—	—	—	19	7.4
Remanded to court of appeals	0	0	0	0	0	—	—	—	—	16	6.3
Board's request for remand or modification of enforcement order denied	0	0	0	0	0	—	—	—	—	1	0.4
Contempt cases remanded to court of appeals	0	0	0	0	0	—	—	—	—	1	0.4
Contempt cases enforced	0	0	0	0	0	—	—	—	—	1	0.4

[1] "Proceedings" are comparable to "cases" reported in annual reports prior to fiscal 1964. This term more accurately describes the data inasmuch as a single "proceeding" often includes more than one "case." See Glossary of terms for definitions.

[2] A proceeding in which the Board had entered an order dismissing the complaint and the charging party appealed such dismissal in the courts of appeals.

[3] The Board appeared as "amicus curiae" in 0 cases.

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Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1997, Compared With 5-Year Cumulative Totals, Fiscal Years 1992 Through 1996[1]

Circuit courts of appeals (headquarters)	Total fiscal year 1997	Total fiscal years 1992–1996	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1997		Cumulative fiscal years 1992–1996		Fiscal Year 1997		Cumulative fiscal years 1992–1996		Fiscal Year 1997		Cumulative fiscal years 1992–1996		Fiscal Year 1997		Cumulative fiscal years 1992–1996		Fiscal Year 1997		Cumulative fiscal years 1992–1996	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	166	749	116	70.0	517	69.0	15	9.0	70	9.3	7	4.2	44	6.0	8	4.8	27	3.6	20	12.0	91	12.1
1. Boston, MA	5	26	3	60.0	20	76.9	0	0.0	2	7.7	0	0.0	4	15.4	1	20.0	0	0.0	1	20.0	0	0.0
2. New York, NY	10	69	8	80.0	51	73.9	0	0.0	10	14.5	0	0.0	2	3.0	0	0.0	1	1.4	2	20.0	5	7.2
3. Philadelphia, PA	9	79	7	77.8	68	86.1	0	0.0	1	1.3	1	11.1	4	5.1	0	0.0	2	2.5	1	11.1	4	5.0
4. Richmond, VA	16	58	10	62.5	39	67.2	3	19.0	6	10.3	0	0.0	2	3.4	1	6.0	3	5.3	2	12.5	8	13.8
5. New Orleans, LA	12	42	8	66.7	28	66.7	0	0.0	5	11.9	1	8.3	3	7.1	0	0.0	1	2.4	3	25.0	5	11.9
6. Cincinnati, OH	34	106	23	67.6	59	55.7	2	5.9	15	14.2	3	8.8	7	6.6	2	5.9	1	0.9	4	11.8	24	22.6
7. Chicago, IL	12	69	9	75.0	49	71.0	3	25.0	7	10.1	0	0.0	4	5.8	0	0.0	3	4.4	0	0.0	6	8.7
8. St. Louis, MO	10	41	8	80.0	23	56.1	0	0.0	6	14.6	1	10.0	1	2.5	0	0.0	0	0.0	1	10.0	11	26.8
9. San Francisco, CA	18	92	15	83.3	75	81.5	1	5.6	6	6.5	0	0.0	3	3.3	0	0.0	1	1.1	2	11.1	7	7.6
10. Denver, CO	2	24	1	50.0	19	79.1	1	50.0	1	4.2	0	0.0	0	0.0	0	0.0	1	4.2	0	0.0	3	12.5
11. Atlanta, GA	6	22	6	100.0	21	95.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	4.5	0	0.0	0	0.0
Washington, DC	32	121	18	56.3	65	53.7	5	15.6	11	9.1	1	3.1	14	11.6	4	12.5	13	10.7	4	12.5	18	14.9

[1] Percentages are computed horizontally by current fiscal year and total fiscal years.

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Table 20.—Injunction Litigation Under Sections 10(e), 10(j), and 10(l), Fiscal Year 1997

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court Sept. 30, 1997
		Pending in district court Oct. 1, 1996	Filed in district court fiscal year 1997		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under Sec. 10(e) total	0	0	0	0	0	0	0	0	0	0	0
Under Sec. 10(j) total	40	5	35	35	14	7	10	4	0	0	5
8(a)(1)	2	0	2	2	1	0	0	1	0	0	0
8(a)(1)(3)	17	1	16	13	3	3	4	3	0	0	4
8(a)(1)(3)(4)	1	0	1	0	0	0	0	0	0	0	1
8(a)(1)(3)(5)	12	2	10	12	8	2	2	0	0	0	0
8(a)(1)(5)	8	2	6	8	2	2	4	0	0	0	0
Under Sec. 10(l) total	25	8	17	18	4	0	8	1	1	4	7
8(b)(4)(B)	16	4	12	12	1	0	5	1	1	4	4
8(b)(4)(B) 8(b)(4)(D)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(B) 8(b)(7)(C)	1	1	0	0	0	0	0	0	0	0	1
8(b)(4)(D)	3	2	1	2	1	0	1	0	0	0	1
8(b)(4)(D)(B)	1	0	1	1	0	0	1	0	0	0	0
8(b)(7)(A)	1	1	0	0	0	0	0	0	0	0	1
8(b)(7)(B)[1]	1	0	1	1	1	0	1	0	0	0	0
8(b)(7)(C)	1	0	1	1	1	0	0	0	0	0	0

[1] In courts of appeals.

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Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1997

Type of litigation	Number of proceedings											
	Total—all courts			In courts of appeals			In district courts			In bankruptcy courts		
		Court determination			Court determination			Court determination			Court determination	
	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position
Totals—all types	32	30	2	14	12	2	13	13	0	5	5	0
NLRB-initiated actions or interventions	0	0	0	0	0	0	0	0	0	0	0	0
To quash state court subpoena	0	0	0	0	0	0	0	0	0	0	0	0
To enforce subpoena or contempt of subpoena	0	0	0	0	1	0	0	0	0	0	0	0
To dismiss action within Board's exclusive jurisdiction	0	0	0	0	0	0	0	1	0	0	0	0
To compel compliance with reorganization plan	0	0	0	0	0	0	0	0	0	0	1	0
To determine Board's claim to be nondischargeable	0	0	0	0	0	0	0	0	0	0	1	0
Action by other parties	0	0	0	0	0	0	0	0	0	0	0	0
To review:	0	0	0	0	0	0	0	0	0	0	0	0
Prosecutorial discretion	0	0	0	0	2	0	0	1	0	0	0	0
Nonfinal orders	0	0	0	0	0	0	0	0	0	0	0	0
Attorney discipline orders	0	0	0	0	0	0	0	0	0	0	0	0
To restrain NLRB from	0	0	0	0	0	0	0	0	0	0	0	0
Enforcing Board subpoenas	0	0	0	0	0	0	0	0	0	0	0	0
Proceeding in R case	0	0	0	0	1	0	0	1	0	0	0	0
Proceeding in unfair labor practice case	0	0	0	0	1	0	0	2	0	0	0	0
To compel NLRB to:	0	0	0	0	0	0	0	0	0	0	0	0
Issue complaint	0	0	0	0	2	0	0	3	0	0	0	0
Take action in R case	0	0	0	0	0	0	0	1	0	0	0	0
Comply with Freedom of Information Act (FOIA)[1]	0	0	0	0	0	0	0	1	0	0	0	0
Take action in compliance proceeding	0	0	0	0	0	0	0	0	0	0	0	0

Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1997—Continued

Type of litigation	Number of proceedings											
	Total—all courts			In courts of appeals			In district courts			In bankruptcy courts		
	Number decided	Court determination		Number decided	Court determination		Number decided	Court determination		Number decided	Court determination	
		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position
Other	0	0	0	0	0	0	0	0	0	0	0	0
Objection to Board's proof of claim	0	0	0	0	0	0	0	0	0	0	2	0
Intervention in §301 suit	0	0	0	0	0	0	0	0	0	0	0	0
To oppose set off to Board's claim	0	0	0	0	0	0	0	0	0	0	1	0
EAJA	0	0	0	0	3	0	0	0	0	0	0	0
Denying stay pending certiorari	0	0	0	0	1	0	0	0	0	0	0	0
Denying attorney's fees in Rehabilitation Act	0	0	0	0	0	0	0	0	0	0	0	0
Denying attorney's fees in FOIA	0	0	0	0	0	0	0	1	1	0	0	0
To involuntarily join Board as a party	0	0	0	0	1	0	0	0	0	0	0	0

[1] FOIA cases are categorized regarding court determination depending on whether NLRB substantially prevailed.

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1997[1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending October 1, 1995	1	1	0	0	0
Received fiscal 1997	5	5	0	0	0
On docket fiscal 1997	6	6	0	0	0
Closed fiscal 1997	6	6	0	0	0
Pending September 30, 1997	0	0	0	0	0

[1] See Glossary of terms for definitions.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1997[1]

Action taken	Total cases closed
	6
Board would assert jurisdiction	6
Board would not assert jurisdiction	0
Unresolved because of insufficient evidence submitted	0
Dismissed	0
Withdrawn	0
Denied	0

[1] See Glossary for of terms definitions.

Table 23.—Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 1997; and Age of Cases Pending Decision, September 30, 1997

Stage	Median days
I. Unfair labor practice cases:	
A. Major stages completed—	
1. Filing of charge to issuance of complaint	86
2. Complaint to close of hearing	184
3. Close of hearing to issuance of administrative law judge's decision	112
4. Receipt of briefs or submissions to issuance of administrative law judge's decision	60
5. Administrative law judge's decision to issuance of Board decision	193
6. Originating document to Board decision	126
7. Assignment to Board's decision	79
8. Filing of charge to issuance of Board decision	557
B. Age of cases pending administrative law judge's decision, September 30, 1997.	
1. From filing of charge	471
2. From close of hearing	95
C. Age of cases pending Board decision, September 30, 1997.	
1. From filing of charge	929
2. From originating document	274
3. From assignment	229
II. Representation cases:	
A. Major stages completed—	
1. Filing of petition of notice of hearing issued	2
2. Notice of hearing to close of hearing	13
3. Close of hearing to Regional Director's decision issued	20
4. Close of pre-election hearing to Board's decision issued	102
5. Close of post-election hearing to Board's decision issued	171
6. Filing of petition to—	
a. Board decision issued	248
b. Regional Director's decision issued	40
7. Originating document to Board decision	107
8. Assignment to Board's decision	68
B. Age of cases pending Board decision, September 30, 1997.	
1. From filing of petition	370
2. From originating document	198
3. From assignment	134
C. Age of cases pending Regional Director's decision, September 30, 1997	118

Table 24.—NLRB Activity Under the Equal Access to Justice Act, Fiscal Year 1997

I. Applications for fees and expenses filed with the NLRB under 5 U.S.C. § 504:	
A. Number of applications filed	3
B. Decisions in EAJA cases ruled on (includes ALJ awards adopted by the Board and settlements):	
Granting fees	2
Denying fees	0
C. Amount of fees and expenses in cases listed in B, above:	
Claimed	$30,185.06
Recovered	$14,345.09
II. Petitions for review of Board Orders denying fees under 5 U.S.C. § 504:	
A. Awards granting fees (includes settlements)	2
B. Awards denying fees	1
C. Amount of fees and expenses recovered pursuant to court award or settlement (includes fees recovered in cases in which court finds merit to claim but remands to Board for determination of fee amount)	$48,585.35
III. Applications for fees and expenses before the circuit courts of appeals under 5 U.S.C. § 2412	
A. Awards granting fees (includes settlements)	1
B. Awards denying fees	2
C. Amount of fees and expenses recovered	$9,000.00
IV. Applications for fees and expenses before the district courts under 5 U.S.C. § 2412:	
A. Awards granting fees (includes settlements)	1
B. Awards denying fees	0
C. Amount of fees and expenses recovered	$17,000.00

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